

COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE

IN RE: : DOCKET NO. 1 JD 2023  
: :  
JUDGE MARK B. COHEN :  
COURT OF COMMON PLEAS :  
1<sup>ST</sup> JUDICIAL DISTRICT :  
PHILADELPHIA COUNTY :

ANSWER OF THE RESPONDENT, JUDGE MARK B. COHEN, TO THE COMPLAINT  
AND NEW MATTER

The Respondent, Judge Mark B. Cohen, by his counsel, Samuel C. Stretton, Esquire, hereby answers the Complaint and respectfully requests it be dismissed for the following reasons:

1. Admitted.
2. Denied in part. Judge Cohen was elected to the Court of Common Pleas in 2017. He began serving as Judge January 1<sup>st</sup>, 2018. He previously served 42 and a half years as an elected Democratic State Representative.
  - i. Judge Cohen is currently on administrative leave due to obstructive sleep apnea, which he is being treated for and is recovering. He should be back on the bench soon once the administrative leave is lifted.
3. Denied. There is no dispute that a complaint was made about Judge Cohen and his postings. Denied that there were improper postings. All postings were within the First Amendment of the United States Constitution and Article I, Section 7 of the Pennsylvania Constitution, and are acceptable speech. All

were accepted speech consistent with comment nine of Code of Judicial Conduct Rule 4.1. None of these postings involved any case pending before Judge Cohen. His posts involve serious discussions of international, national and state issues.

4. Admitted a complaint was opened.

5. Denied as stated. Although it is agreed that the Judicial Conduct Board determined probable cause existed for the filing of formal charges, the Respondent, Judge Cohen, respectfully denies that there is probable cause and contends that there is no violation of the Rules and that his posts were acceptable First Amendment speech. See answer to no. 3.

6. Denied. Judge Cohen's Facebook postings have to be read in their entirety. The complaint only attaches some of them. There are thousands of them, many serious discussions on important and serious issues.

a) Denied that there was political support or of political figures, etc. Judge Cohen discussed important government officials and public officials both of the Republican and Democratic parties. The discussions were well stated but not supportive of a political candidate.

b) Denied that he supported the legislation because it was embraced by the Democratic party and the political left. The term "political left" is not defined. Judge Cohen discussed, at times, legislation at the state and national level. The

discussion involved the merits of the legislation and not whether the legislation was proposed by the Democratic party or whether the legislation was left or right or in the middle.

c) Denied that he supported issues embraced by the Democratic party and the political left. Again, the "political left" is a meaningless phrase in the context of the Code of Judicial Conduct. Judge Cohen discussed policy, issues and initiatives imposed by various legislative and executive branches. Those were general discussions. He did not support just the Democratic party issues such as increased infrastructure spending, but also Republican party issues, such as warning of the dangers of inflation, depending on the merits of the same.

d) Denied. Judge Cohen, at times, criticized both the Republicans, like Kevin McCarthy, and Democrats, like Joe Manchin. His criticisms were discussions of the merits or lack of merits of their actions or conduct.

e) Denied. Judge Cohen had discussions both of Democratic and Republican legislation. He sometimes criticized those in scholarly discussions or suggested they have merit in scholarly discussions. He did not just support Democratic versus Republican issues. That is false. Admitted the posts of Judge Cohen were made after he was elected. Judge Cohen has had Facebook posts since 2007. Judge Cohen is a very serious and

scholarly man. He is extremely well-read. While in the legislature he held positions of leadership and was extremely knowledgeable and respected.

7) Admitted.

8) Judge Cohen's Facebook page did note that he was a judge. He certainly has the right to note his occupation.

9) As to the Facebook postings, it is denied that any of them warrant formal charges. Again, these are just a few of the thousands of posts, many of which involve serious discussions of important issues at the international, national and state government levels. In no posts does Judge Cohen endorse any candidate. In no posts does he support political candidates. In no post does he support Republicans over Democrats or vice versa. In no post does he talk about issues that are before his Court or might appear before his Court. As to the various attachments, which are found at I through LXVI, Judge Cohen admits that he posted these posts. He admits that he wrote them. He denies how they are described in the Petition. For instance, the first post of October 29<sup>th</sup>, 2022, Judge Cohen talks about the person who assaulted the husband of then House Speaker Pelosi. He was commenting on these very important issues and noted the extremist's past and noted that this individual showed a pattern of failure and hate. There is nothing wrong with that post. The second post further discusses this individual and about his

hateful past. These are valid speech issues and have nothing to do with the Court or politics or anything of that nature. The next post involves noting the 80<sup>th</sup> birthday of the President of the United States. This is a comment on the President's role and his past experiences that aid him in being the President of the United States. The next post involves comments about the dismissal of Carlos Vega's lawsuit against DA Larry Krasner. The next post talks about the election of Governor Shapiro and Senator Fetterman, a former Lieutenant Governor and suggests that their elections helped to demonstrate the respect for state government increased by the Wolf Administration. This is a proper comment on two men that served in high office and then were elected to higher offices. The next post involves the fact that Judge Cohen noted that Governor Shapiro's father was a classmate of his at Central High School in Philadelphia and was up for the job of Governor. That is a perfectly permissible and First Amendment comment and none of them indicate any support or endorsement of Governor Shapiro or Senator Fetterman.

There is no need to go through all of these posts at this point in time other than to point out that they do not endorse or support any particular political party or candidates or any conservative or liberal position. Many of them are middle of the road comments. Many of them are scholarly or knowledgeable comments about issues and/or personalities. All of that is

permissible speech under the First Amendment of the United States Constitution and Article I, Section 7 of the Pennsylvania Constitution. All are consistent with Code of Judicial Conduct, Rule 4.1, comment nine. It must also be understood that these posts were part of a give and take on the internet. Judge Cohen would discuss knowledgeable issues and people would respond and he would respond back. All of his responses were dignified and proper and many of them were knowledgeable and informed comments on serious issues. All of these comments are within acceptable speech and not prohibited by the Code of Judicial Conduct and did not in any way, involve cases pending before the Judge, or issues that would appear before the Judge. Judge Cohen, at all pertinent times, sits in Family Court and deals with Family Court related issues. None of his posts involved talking about individual cases, litigants or attorneys before him.

#### CHARGES

##### COUNT I - VIOLATION OF CANON 1, RULE 1.1

10) Denied that Judge Cohen violated Rule 1.1 that prohibits violation of the law and requires the Judge to comply with the law including the Code of Conduct. None of these posts violated any Code or Constitutional prohibitions. All are consistent with the First Amendment of the United States Constitution and Article I, Section 7 of the Pennsylvania

Constitution and comment nine of Rule 4.1 of the Code of Judicial Conduct.

11) Admitted that Rule 1.1 of the Code of Judicial Conduct is correctly quoted.

12) Admitted that the definition section includes law, statutes, rules, cases and the Judicial Code.

13) Denied. It is emphatically and absolutely denied that any of these posts violate any of the Rules or Code of Judicial Conduct. All of these were accepted speech under the First Amendment of the United States Constitution and Article I, Section 7 of the Pennsylvania Constitution and were distinguished and educated speech. All were consistent with comment nine to Rule 4.1 of the Code of Judicial Conduct. This count should be dismissed.

**COUNT 2 (A) AND (B) - VIOLATION OF CANON 1, RULE 1.2**

14) Emphatically and absolutely denied. Judge Cohen denies that he violated Rule 1.2 of the Code of Judicial Conduct. In fact, his posts are acceptable speech under the First Amendment of the United States Constitution and Article I, Section 7 of the Pennsylvania Constitution and comment nine of Rule 4.1 of the Code of Judicial Conduct. His speech would promote the confidence, independence and the impartiality of the judiciary in that the posts were educated, serious and important discussions on issues of importance on issues that did not

appear before Judge Cohen's Court. There is nothing in his posts that show impropriety or the appearance of impropriety or any lack of impartiality.

15) Admitted that Rule 1.2 is properly quoted.

16) Emphatically denied that Judge Cohen violated Rule 1.2 and denied that his conduct failed to promote public confidence in the independence, integrity and impartiality of the judiciary. On the contrary, he enhanced the public's perception of his integrity, independence and impartiality by his learned and detailed discussions on major issues.

17) Denied that Judge Cohen violated Rule 1.2 of the Code of Judicial Conduct. Denied that his postings violated prohibitions of impropriety or the appearance of impropriety. His speech was protected by the First Amendment of the United States Constitution, Article I, Section 7 of the Pennsylvania Constitution and comment nine to Rule 4.1 of the Code of Judicial Conduct. This should be dismissed.

**COUNT 3 - VIOLATION OF CANON 1, RULE 1.3**

18) Emphatically denied that Judge Cohen violated Rule 1.3 of the Code of Judicial Conduct. On the contrary, his comments and statements on his posts were protected by the First Amendment of the United States Constitution and Article I, Section 7 of the Pennsylvania Constitution.

19) Admitted that Rule 1.3 is properly quoted.



20) Denied. Denied that the postings violated Rule 1.3. Denied that Judge Cohen, by posting, abused the prestige of his judicial office to advance his own personal or economic interests or interests of others. There is nothing on these posts to advance his personal or economic interests. These posts are serious discussions on important issues. There is no money exchanged, there is no business dealings going on, his judicial office is not at issue. These posts were discussions on important issues by the Respondent who is extremely knowledgeable, well-read and learned. Denied that there is any violation. Further, these posts are protected speech pursuant to the First Amendment of the United States Constitution, Article I, Section 7 of the Pennsylvania Constitution and comment nine to Rule 4.1 of the Code of Judicial Conduct. Judge Cohen did not abuse the prestige of his judicial office and this count should be dismissed.

**COUNT 4 - VIOLATION OF CANON 3, RULE 3.1(C)**

21) Denied that Judge Cohen violated Rule 3.1(c) of the Pennsylvania Code of Judicial Conduct. On the contrary, his speech and postings are acceptable speech pursuant to the First Amendment of the United States Constitution and Article I, Section 7 of the Pennsylvania Constitution and comment nine to Rule 4.1 of the Code of Judicial Conduct.

22) Admitted that Rule 3.1(c) is properly quoted. Denied that there is any violation.

23) Emphatically denied. It is denied that Judge Cohen's Facebook postings violated Rule 3.1(c). It is denied that his postings are the kind of extrajudicial conduct that would undermine the independence, integrity and impartiality of the judiciary. On the contrary, his postings are extremely learned and are knowledgeable and well-read and show an independent mind discussing important issues with other people. If anything, they demonstrate his independence, integrity, impartiality and his strong intellectual and knowledgeable background. This count should be dismissed.

**COUNT 5 - VIOLATION OF CANON 3, RULE 3.7(A)**

24) Denied. Denied that the postings violated Rule 3.7(a) of the Code of Judicial Conduct. Judge Cohen respectfully contends that his speech was properly regulated and consistent with what he has is allowed to speak on pursuant to the First Amendment of the United States Constitution and Article I, Section 7 of the Pennsylvania Constitution and comment nine to Rule 4.1 of the Code of Judicial Conduct. None of his speech, in any way, discussed cases before him or issues that would appear in his Court.

25) Admitted that Rule 3.7(a) of the Code of Judicial Conduct is correctly quoted. The Rule does allow the Judge to

speak, write and teach on non-legal subjects. That is exactly what Judge Cohen was doing on his postings and bloggings. His conduct did not detract from the dignity of the office nor does it interfere with his judicial duties.

26) Emphatically denied. It is emphatically denied that Judge Cohen's postings detracted from the dignity of his office. On the contrary, it enhanced the dignity of his office because it showed an extremely well-read and knowledgeable person, well-informed on important issues of the day. Nowhere does he discuss or quote matters that would appear before him, that are appearing before him or that may appear before him. This count should be dismissed.

**COUNT 6 - VIOLATION OF CANON 4, RULE 4.1(A) (3)**

27) Denied. It is denied that Judge Cohen violated Rule 4.1(a) (3) of the Code of Judicial Conduct. On the contrary, Judge Cohen's speech was protected speech and protected by the First Amendment of the United States Constitution and Article I, Section 7 of the Pennsylvania Constitution and comment nine to Rule 4.1 of the Code of Judicial Conduct. At no time, did his speech discuss matters before him or that would appear before his Court.

28) Admitted that Rule 4.1 is properly quoted. Denied that Judge Cohen ever endorsed or opposed a candidate.

29) Denied as stated. Denied that Judge Cohen violated Rule 4.1(a)(3). Denied that he endorsed former Republican United States Congresswoman Cheney. On the contrary, Representative Cheney was playing a very important role in Congress in being on committees and investigating the January 6<sup>th</sup>, 2021 riot at the United States capitol. Judge Cohen, and many other people, discussed her strength and courage in doing so. He never endorsed her. His speech was protected speech. This count should be dismissed.

**COUNT 7 - VIOLATION OF CANON 4, RULE 4.1(A) (11)**

30) Denied as stated. It is denied that Judge Cohen violated Rule 4.1(a)(11) and denied that he engaged in any political activity as a Judge.

31) Admitted that Rule 4.1(a)(11) is correctly quoted.

32) Denied. It is emphatically denied that Judge Cohen's postings violated Rule 4.1(A)(11). It is denied that his conduct constituted political activity on behalf of an organization, namely the Democratic party. That is absolutely and totally false. His postings discuss issues and debate issues with other persons. They are serious discussions on important issues. None of them involve any endorsement of the Democratic party or a particular candidate. This conduct is protected speech pursuant to the First Amendment of the United States Constitution, Article I, Section 7 of the Pennsylvania Constitution and

comment nine to Rule 4.1 of the Code of Judicial Conduct. This count should be dismissed.

**COUNT 8 - VIOLATION OF ARTICLE V, SECTION 17(B) OF THE  
CONSTITUTION OF THE COMMONWEALTH OF PENNSYLVANIA**

33) Denied that Judge Cohen violated Article V, Section 17(b) of the Pennsylvania Constitution. That provision precludes violating any legal or judicial ethics and canons of judicial ethics. Judge Cohen respectfully contends that he did not violate any such canons and did not violate Article V, Section 17(b) of the Pennsylvania Constitution.

34) Admitted that Article V, Section 17(b) of the Pennsylvania Constitution is correctly quoted.

35) Denied as stated. It is denied that there is ever an automatic violation. More importantly, it is denied that Judge Cohen violated any Code of Conduct and denied that he violated Article V, Section 17(b) of the Pennsylvania Constitution.

36) Denied that Judge Cohen violated Rule 1.1, Rule 1.2, Rule 1.3, Rule 3.1(c), Rule 3.7(a), Rule 4.1(a)(3) and Rule 4.1(a)(11). Judge Cohen emphatically denies that any of his speech violated any of these Rules and further contends that his speech is protected speech under the First Amendment of the United States Constitution and Article I, Section 7 of the Pennsylvania Constitution.

37) Denied. Denied that Judge Cohen violated the aforementioned Codes of Judicial Conduct and denied that he violated Article V, Section 17(b) of the Pennsylvania Constitution. This conduct is protected speech under the First Amendment of the United States Constitution, Article I, Section 7 of the Pennsylvania Constitution and comment nine to Rule 4.1 of the Code of Judicial Conduct. This count should be dismissed.

WHEREFORE, the Respondent, Judge Mark B. Cohen, by his counsel, Samuel C. Stretton, Esquire, respectfully contends that this Complaint lacks merit and that he properly engaged in protected speech of serious discussions of international, national and state issues. He respectfully contends that his conduct was consistent with the First Amendment of the United States Constitution, Article I, Section 7 of the Pennsylvania Constitution and comment nine to Rule 4.1 of the Code of Judicial Conduct. He respectfully requests this Complaint be dismissed for lacking merit.

**NEW MATTER**

The Respondent, Judge Mark B. Cohen, by his counsel Samuel C. Stretton, Esquire, in his defense, raises the following issues as New Matter:

38) The Respondent incorporates by references his answers to all of the above paragraphs 1 through 37 in his Answer.

39) The Respondent raises the defense that his comments were proper comments consistent with his freedom of speech pursuant to the First Amendment of the United States Constitution. He contends that his comments did not violate any Code of Judicial Conduct or the Pennsylvania Constitution. Further, he contends that his comments were protected speech pursuant to First Amendment of the United States Constitution and Article I, Section 7 of the Pennsylvania Constitution or any Rules of the Code of Conduct or any other Constitutional provisions. His speech was also protected by comment nine to Rule 4.1 of the Code of Judicial Conduct. His speech and comments were discussing issues of international, national and statewide importance. He did not discuss anything appearing in his Courtroom or any issues that may appear in his Courtroom. Judge Cohen, at all pertinent times, sat in Family Court in Philadelphia County, Pennsylvania.

40) Judge Cohen respectfully raises that his comments were protected speech pursuant to Article I, Section 7 of the Pennsylvania Constitution and the First Amendment of the United States Constitution and incorporates by reference, his above answers.

41) Judge Cohen respectfully contends that his speech is acceptable and not in violation of any Rules in the Pennsylvania Code of Judicial Conduct or the Pennsylvania Constitution. He

further contends that there would be a due process violation of finding a violation of the Code of Judicial Conduct since the Code of Judicial Conduct does not address blogging or social media speech. There was and is no specific decisions or guidelines on this type of speech. The Rules are too vague and would violate due process under the Fourteenth Amendment of the United States Constitution and related provisions of the Pennsylvania Constitution since the Rules fail to provide adequate notice of warning that this speech would be a violation. As a result, no one would be in a position to know they were in violation of the Rules due to the lack of guidance, direction, or notice in the Code of Judicial Conduct rules or Court decisions on these issues in Pennsylvania.

42) Judge Cohen raises the defense of laches, in that he has been posting since 2007 and no one initially told him it was wrong to continue or was prohibited until the current charges were made. Not one single litigant or attorney objected to a single post. He contends that this prosecution be dismissed on laches since it was untimely and brought after years after he has already been posting and blogging without criticism or notice.

43) Judge Cohen raises the defense that under Code of Conduct 3.7, Judges are encouraged to write, lecture, teach and speech on non-legal subjects and engage in the arts and other



social and recreational activities as long as it does not detract from the dignity of the judicial office or interfere with the performance of judicial duties. There is no specific allegation that is suggesting that his posting has interfered with his judicial duties. Not a single case of the thousands that he handled, has been mentioned. Any harm alleged is purely hypothetical. There is nothing that would suggest that these posts detract from the dignity of his judicial office, in that, his posts do not discuss matters that come before the Court and show knowledgeable, learned and informed serious discussions on matters of importance.

44) Judge Cohen further, raises the defense that his comments are permissible under the Code of Conduct Rule 4.1. Under Rule 4.1, under comment nine, it states:

"Pledges, promises or commitments must be contrasted with statements or announcements of personal views in legal, political or other issues which are not prohibited," see comment nine to Rule 4.1.

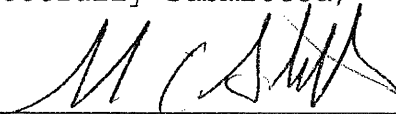
In other words, the canon under Rule 4.1, in comment nine, the Code of Judicial Conduct endorses and allows statements or announcements of personal views on legal, political or other issues. This comment to this Rule was also raised as part of the Answer as Judge Cohen's defense.

45) Judge Cohen raises the defense of selective prosecution, in that, over the years other Judges have posted,

written or commented extensively on controversial issues and even communicated with him on posts in discussions of serious issues but none of them have been prosecuted for the same.

WHEREFORE, the Respondent, Judge Mark B. Cohen, by his counsel, Samuel C. Stretton, Esquire, respectfully requests that this Honorable Court find there were no violations of the Pennsylvania Code of Judicial Conduct and the Pennsylvania Constitution and dismiss this complaint with prejudice.

Respectfully submitted,



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Samuel C. Stretton, Esquire  
Attorney for the Respondent,  
Hon. Mark B. Cohen  
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(610) 696-4243  
Attorney I.D. No. 18491

VERIFICATION

I, the Honorable Mark B. Cohen, hereby verify that the facts set forth in the attached Answer to the Complaint and New Matter are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa.C.S.A. Section 4904 relating to unsworn falsification to authorities.

Date:

4-18-23

Mark B. Cohen

The Honorable Mark B. Cohen

COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE

IN RE: : DOCKET NO. 1 JD 2023  
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JUDGE MARK B. COHEN :  
COURT OF COMMON PLEAS :  
1<sup>ST</sup> JUDICIAL DISTRICT :  
PHILADELPHIA COUNTY :

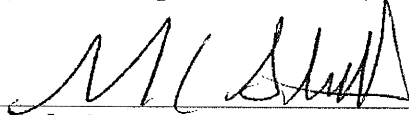
CERTIFICATE OF COMPLIANCE

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

Respectfully submitted,

4/18/23

Date

  
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COURT OF COMMON PLEAS :  
1<sup>ST</sup> JUDICIAL DISTRICT :  
PHILADELPHIA COUNTY :

CERTIFICATE OF SERVICE

I hereby certify I am this date serving a copy of the foregoing Answer to the Complaint and New Matter in the captioned matter upon the following persons in the manner indicated below.

Service by electronic mail addressed as follows:

1. Joseph U. Metz, Esquire  
Chief Counsel  
Court of Judicial Discipline  
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3. James P. Kleman, Jr., Esquire  
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4. The Honorable Mark B. Cohen  
1501 Arch Street  
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Email: [Mmacohen1@verizon.net](mailto:Mmacohen1@verizon.net)

4/18/23

Date

Respectfully submitted,



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