

**COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE**

IN RE:

Judge Mark B. Cohen  
Court of Common Pleas  
1<sup>st</sup> Judicial District  
Philadelphia County

.....

1 JD 2023

COURT OF JUDICIAL DISCIPLINE  
OF PENNSYLVANIA

MAR 16 2023

RECEIVED AND FILED

**JUDICIAL CONDUCT BOARD’S REPLY AND MEMORANDUM OF LAW TO  
OMNIBUS MOTION PURSUANT TO RULE 411 OF THE RULES OF PROCEDURE  
OF THE COURT OF JUDICIAL DISCIPLINE REQUESTING DISMISSAL OF THE  
CASE**

AND NOW, this 16<sup>th</sup> day of March, 2023, comes the Judicial Conduct Board of the Commonwealth of Pennsylvania (Board) by and through undersigned counsel, and files this Reply to Judge Cohen’s Omnibus Motion Pursuant to Rule 411 of the Rules of Procedure of this Honorable Court requesting Dismissal of the Case and accompanying Memorandum of Law:

1. Admitted in part, Denied in part. By way of further answer, it is admitted that Judge Cohen served as a member of the Pennsylvania House of Representatives until he was defeated in the 2016 primary in his final bid for re-election and thereafter concluded his term. It is also admitted that Judge Cohen was thereafter elected to the Court of Common Pleas in 2018. It is denied that Judge Cohen maintains a “blog;” Judge Cohen makes posts to his personal Facebook page, some of which are the subject of the Board Complaint. The remainder of this averment constitutes either conclusions of law, for which no response is necessary, or fails to state facts upon which a response may be formulated. Accordingly, the remainder of this averment is denied.

2. The averment states a conclusion of law for which no response is necessary. To the extent that this conclusion is construed to allege facts, they are denied and strict proof of same is demanded. The Board will submit its argument regarding this conclusion in the attached memorandum of law.
3. Denied as stated. The Board filed a Board Complaint against Judge Cohen on February 23, 2023.
4. Denied as stated. The Board charged Judge Cohen with the Facebook posts he made to his Facebook page which the Board concluded constituted violations of the Code of Judicial Conduct. To the extent that Judge Cohen made posts that were not violations of the Code, Judge Cohen was not charged with those posts.
5. The averment states a conclusion of law for which no response is necessary. To the extent that this conclusion is construed to allege facts, they are denied and strict proof of same is demanded. The Board will submit its counter argument regarding this conclusion in the attached memorandum of law.
6. The averment states a conclusion of law for which no response is necessary. To the extent that this conclusion is construed to allege facts, they are denied and strict proof of same is demanded. The Board will submit its counter argument regarding this conclusion in the attached memorandum of law.
7. Admitted in part. It is admitted that the selected text of Article I, Section 7 of the Pennsylvania Constitution provided in this averment is accurately reproduced and that it guarantees the right of free communication of

thoughts and opinions. It is denied that Article I, Section 7 of the Pennsylvania Constitution requires the dismissal of this case.

8. Admitted in part. It is admitted that the selected text of the First Amendment to the United States Constitution is accurately reproduced and that it guarantees the rights stated in its text. The remainder of this averment states a conclusion of law for which no response is necessary. The Board will submit its counter argument regarding this conclusion in the attached memorandum of law.
9. Admitted in part. It is admitted that the text of comment 9 to Canon 4, Rule 4.1 of the Code of Judicial Conduct is accurately reproduced in this averment. It is denied that Rule 4.1(A)(12), to which the comment pertains, is relevant to this case, as a violation of Rule 4.1(A)(12) was not charged against Judge Cohen. The remainder of this averment states a conclusion of law for which no response is necessary. The Board will submit its counter argument regarding this conclusion in the attached memorandum of law.
10. Admitted in part. It is admitted that Judge Cohen is not presently a candidate for political office. To the extent that *Judicial Conduct and Ethics, 6<sup>th</sup> Ed.*, is accurately reproduced in the averment, its use in this averment is for the purpose of presenting legal argument or for stating conclusions of law in the remainder of the averment, for which no response is necessary. The Board will submit its counter argument regarding these matters in the attached memorandum of law.

11. To the extent that *Judicial Conduct and Ethics, 6th Ed.*, is accurately reproduced in the averment, its use in this averment is for the purpose of presenting legal argument or for stating conclusions of law in the remainder of the averment, for which no response is necessary. The Board will submit its counter argument regarding these matters in the attached memorandum of law.
12. To the extent that *Judicial Conduct and Ethics, 6th Ed.*, is accurately reproduced in the averment, its use in this averment is for the purpose of presenting legal argument or for stating conclusions of law for which no response is necessary. The Board will submit its argument regarding these matters in the attached memorandum of law.
13. To the extent that *Judicial Conduct and Ethics, 6th Ed.*, is accurately reproduced in the averment, its use in this averment is for the purpose of presenting legal argument or for stating conclusions of law for which no response is necessary. The Board will submit its argument regarding these matters in the attached memorandum of law.
14. Denied in part. To the extent that this averment is construed to allege facts, they are denied and strict proof of same is demanded. To the extent that *Judicial Conduct and Ethics, 6th Ed.*, is accurately reproduced in the averment, its use in this averment is for the purpose of presenting legal argument or for stating conclusions of law for which no response is necessary. The Board will submit its argument regarding these matters in the attached memorandum of law.

15. This averment states conclusions of law for which no response is necessary. To the extent that this conclusion is construed to allege facts, they are denied and strict proof of same is demanded. The Board will submit its argument regarding this conclusion in the attached memorandum of law.
16. This averment either presents legal argument or states conclusions of law, for which no response is necessary. The Board will submit its counter argument regarding these matters in the attached memorandum of law.
17. This averment either presents legal argument or states conclusions of law, for which no response is necessary. The Board will submit its counter argument regarding these matters in the attached memorandum of law.
18. This averment either presents legal argument or states conclusions of law, for which no response is necessary. To the extent that this conclusion is construed to allege facts, they are denied and strict proof of same is demanded. The Board will submit its counter argument regarding these matters in the attached memorandum of law.
19. Admitted in part. It is admitted that judges, including retired judges and Justices of the United States Supreme Court noted in the averment, have written books on various subjects. The remainder of this averment either presents legal argument or states conclusions of law, for which no response is necessary. The Board will submit its counter argument regarding these matters in the attached memorandum of law.
20. Denied as stated. To the extent that this averment seeks to reproduce allegations in the Board Complaint, those allegations speak for themselves, and Judge Cohen's attempt to recast them in his legal arguments are

denied. The remainder of this averment presents either legal argument or states conclusions of law, for which no response is necessary. The Board will submit its counter argument regarding these matters in the attached memorandum of law.

21. Admitted in part. It is admitted that Count 1 of the Board Complaint alleges that Judge Cohen violated Canon 1, Rule 1.1 by his posts to his personal Facebook page. The remainder of this averment either presents legal argument or states conclusions of law, for which no response is necessary. The Board will submit its counter argument regarding these matters in the attached memorandum of law.
22. Admitted in part, denied in part. It is admitted that Count 2 of the Board Complaint alleges that Judge Cohen violated Canon 1, Rule 1.2 by his posts to his personal Facebook page. The remainder of this averment either presents legal argument or states conclusions of law, for which no response is necessary. To the extent that this argumentation or the conclusions can be construed to allege facts, they are denied and strict proof of same is demanded. The Board will submit its counter argument regarding these matters in the attached memorandum of law.
23. Admitted in part, denied in part. It is admitted that Count 3 of the Board Complaint alleges that Judge Cohen violated Canon 1, Rule 1.3 by his posts to his personal Facebook page. The remainder of this averment either presents legal argument or states conclusions of law, for which no response is necessary. To the extent that this argumentation or the conclusions can be construed to allege facts, they are denied and strict proof of same is

demanded. The Board will submit its counter argument regarding these matters in the attached memorandum of law.

24. Admitted in part, denied in part. It is admitted that Count 4 of the Board Complaint alleges that Judge Cohen violated Canon 3, Rule 3.1(C) by his posts to his personal Facebook page. The remainder of this averment either presents legal argument or states conclusions of law, for which no response is necessary. To the extent that this argumentation or the conclusions can be construed to allege facts, they are denied and strict proof of same is demanded. The Board will submit its counter argument regarding these matters in the attached memorandum of law.
25. Admitted in part, denied in part. It is admitted that Count 5 of the Board Complaint alleges that Judge Cohen violated Canon 3, Rule 3.7(A) by his posts to his personal Facebook page. The remainder of this averment either presents legal argument or states conclusions of law, for which no response is necessary. To the extent that this argumentation or the conclusions can be construed to allege facts, they are denied and strict proof of same is demanded. The Board will submit its counter argument regarding these matters in the attached memorandum of law.
26. Admitted in part, denied in part. It is admitted that Count 6 of the Board Complaint alleges that Judge Cohen violated Canon 4, Rule 4.1(A)(3) by his post to his personal Facebook page regarding former U.S Representative Liz Cheney. The remainder of this averment either presents legal argument or states conclusions of law, for which no response is necessary. To the extent that this argumentation or the conclusions can be construed

to allege facts, they are denied and strict proof of same is demanded. The Board will submit its counter argument regarding these matters in the attached memorandum of law.

27. Denied as stated. Count 7 of the Board Complaint alleges that Judge Cohen violated Canon 4, Rule 4.1(A)(11) by his posts to his personal Facebook page. The remainder of this averment either presents legal argument or states conclusions of law, for which no response is necessary. To the extent that this argumentation or the conclusions can be construed to allege facts, they are denied and strict proof of same is demanded. The Board will submit its counter argument regarding these matters in the attached memorandum of law.
28. Admitted in part, denied in part. It is admitted that Count 8 of the Board Complaint alleges that Judge Cohen violated Article V § 17(b) of the Pennsylvania Constitution as an automatic, derivative violation of the other violations of the Code of Judicial Conduct that he committed by his posts to his personal Facebook page. The remainder of this averment states a conclusion of law, for which no response is necessary
29. Denied in part. The facts alleged in this averment are denied and strict proof of same is demanded. The remainder of this averment constitutes a prayer for relief for which no response is necessary.



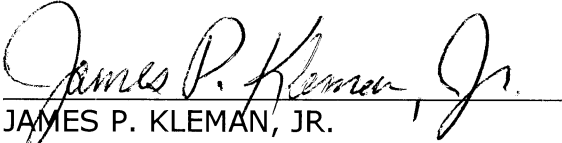
WHEREFORE, based upon the averments set forth above and the arguments in the Board's supporting Memorandum, incorporated herein by reference as though set forth in full, the Board respectfully requests that this Honorable Court DENY Judge Cohen's omnibus motion in full.

Respectfully submitted,

MELISSA L. NORTON  
*Chief Counsel*

March 16, 2023

By:

  
JAMES P. KLEMAN, JR.  
*Senior Deputy Counsel*  
Pa. Supreme Court ID No. 87637  
Judicial Conduct Board  
Pennsylvania Judicial Center  
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**COMMONWEALTH OF PENNSYLVANIA  
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1<sup>st</sup> Judicial District  
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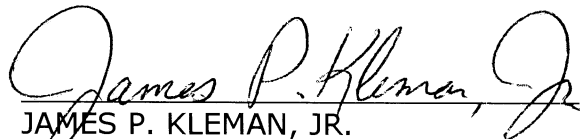
COURT OF JUDICIAL DISCIPLINE  
OF PENNSYLVANIA  
MAY 16 2023  
JAN 16 2023

**VERIFICATION**

I, James P. Kleman, Jr., Deputy Counsel to the Judicial Conduct Board, verify that the facts set forth in the foregoing Reply and Memorandum of Law are true and correct to the best of my knowledge, information, and belief. I understand that the statements made in the foregoing Reply and attached memorandum are subject to the penalties of 18 Pa.C.S.A. § 4904, regarding unsworn falsification to authorities.

March 16, 2023

By:



JAMES P. KLEMAN, JR.  
*Senior Deputy Counsel*  
Pa. Supreme Court ID No. 87637  
Judicial Conduct Board  
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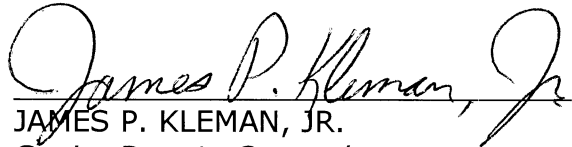
**PROOF OF SERVICE**

In compliance with Rule 122 of the Court of Judicial Discipline Rules of Procedure, on March 16, 2023, a copy of the Board's Reply and Memorandum of Law was sent by UPS Overnight mail to Judge Cohen's counsel, Samuel C. Stretton, Esquire, at the following address:

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

March 16, 2023

By:



JAMES P. KLEMAN, JR.  
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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* 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.  
*Senior Deputy Counsel*

Attorney No:

87637