

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

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OF PENNSYLVANIA

OCT 7 2024

RECEIVED AND FILED

IN RE:

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

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No. 1 JD 23

BEFORE: Honorable Daniel E. Baranoski, P.J., Honorable Jill E. Rangos, J., Honorable Thomas E. Flaherty, J., Honorable Sonya M. Tilghman, J., Honorable Charles Becker, J., Honorable Steven D. Irwin, J., Honorable Carolyn H. Nichols, J., Honorable Jacob D. Corman, III, J.

PER CURIAM

FILED: October 7, 2024

OPINION AND ORDER

Judge Mark Cohen of the Court of Common Pleas of Philadelphia County is before this Court for the determination of the appropriate sanction for his violations found in our Opinion and Order of May 3, 2024. In that Opinion and Order this Court found violations in Judge Cohen's actions in repeatedly posting items on the internet reflecting his political views even after being warned not to do so.

Factors Considered in Determining Sanction

In determining what sanction will be imposed for an ethical violation this Court is guided by the jurisprudence of our Supreme Court, and also by its prior decisions. Pennsylvania has adopted ten non-exclusive factors, sometimes called "Deming Factors" from the original Washington State case where they were exposted. ***In re Roca*, 151 A.3d 739, 741 (Pa.Ct.Jud.Disc. 2016), aff'd, 173 A.d 1176 (Pa. 2017), citing *In re Toczydlowski*, 853 A.2d 20 (Pa.Ct.Jud.Disc. 2004); *In re Deming*, 736 P.2d 639 (Wa. 1987).** The ten factors and their application to this case are as follows:

1. Whether the misconduct is an isolated instance or evidenced a pattern of conduct: The misconduct in this case was repeated and was continued even after warnings by a supervisory judge and even after a unanimous opinion by the Court of Judicial Discipline.

2. The nature, extent, and frequency of occurrence of the acts of misconduct: The misconduct by Judge Cohen involved dozens of public posts reflecting his political views after repeated warnings to stop such conduct.

3. Whether the conduct occurred in or out of the courtroom: The conduct occurred outside the courtroom.

4. Whether the misconduct occurred in the judge's official capacity: The misconduct here was generally not done in Judge Cohen's official capacity.

5. Whether the judge acknowledged or recognized that the acts occurred: Judge Cohen has acknowledged the conduct but maintains it is permitted.

6. Whether the Judge has evidenced an effort to change or modify their conduct: Judge Cohen did not change his conduct.

7. The length of service on the bench: Judge Cohen has been on the bench for six years.

8. Whether there have been prior complaints about the judge: There have not been prior complaints about Judge Cohen.

9. The effect the misconduct has upon the integrity of and respect for the judiciary: Judge Cohen's defiance of the Court's ruling on his liability after his trial is damaging as are his expressions of his political beliefs by one who is sworn to be a neutral jurist.

10. The extent to which the judge exploited his or her position to satisfy personal desires: Judge Cohen's misconduct was committed partially to

advance his own interests in that he clearly enjoyed his political postings and testified so during his trial.

Discussion

Judge Cohen's misconduct is the subject of a lengthy opinion by this Court issued on May 3, 2024. Judge Cohen posted dozens of political posts over the warnings of his supervisory judge and others, including this, Court. His defiance and continued postings after this Court's May 3, 2024, Opinion is exceptional: no other case in history of the Court of Judicial Discipline has involved such defiance post decision.

No case previously before this Court is analogous to Judge Cohen's situation but by comparison Justice Eakin resigned and was fined \$50,000 for his misconduct with internet postings, ***see In re Eakin, 150 A.3d 1042 (Pa.Ct.Jud.Disc. 2016)***. In contrast to Judge Cohen, Justice Eakin's postings were not intentionally spread to the public by him, and he apologized for his misconduct. Here, the political postings of Judge Cohen were intentionally sent out by him and there has been no apology to those who might disagree with him. Sitting judges are not allowed to broadcast their political leanings. People appearing before judges deserve fair, unprejudiced jurists to weigh their cases. Judge Cohen's misconduct is especially harmful because of his defiance as adduced at his Sanction Hearing.

Accordingly, as a sanction it is ORDERED that Judge Mark B. Cohen is immediately suspended without pay for the remainder of his term of service ending December 31, 2024, with his mandatory end of judicial service on that day.

PER CURIAM