

Miscellaneous Docket Sheet

Commonwealth Court of Pennsylvania

Docket Number: 116 MD 2016

Page 1 of 7

June 23, 2018

**CAPTION**

In Re: Objection to Nomination Petitions of
Jared Solomon to be a Candidate Democratic Party
Nomination for Office Member of those of
Representatives for 202nd District

Petition of: Mark Cohen

CASE INFORMATION

Initiating Document: Objection to Nominating Petition

Case Status: Closed

Case Processing Status: March 18, 2016 Completed

Journal Number:

Case Category: Election

Case Type(s): Objection to Nomination Papers

CONSOLIDATED CASES**RELATED CASES****COUNSEL INFORMATION****Petitioner Cohen, Mark**

Pro Se: No

IFP Status:

Attorney: Paul, Robert E.
Law Firm: Paul, Reich & Myers, P.C.
Address: Suite 500
1608 Walnut Street
Philadelphia, PA 19106
Phone No: (215) 735-9200 Fax No:

Other Kotula, Kathleen M.

Pro Se: No

IFP Status:

Attorney: Kotula, Kathleen Marie
Law Firm: Pennsylvania Department of State
Address: PA Dept of State
301 N Ofc Bldg 401 North St
Harrisburg, PA 17120-0500
Phone No: (717) 783-0736 Fax No:

Respondent Solomon, Jared

Pro Se: No

IFP Status:

Attorney: Greenberg, Kevin Michael
Law Firm: Flaster Greenberg, P.C.
Address: 1600 John F Kennedy Blvd Ste 200
Philadelphia, PA 19103
Phone No: (215) 279-9912 Fax No: (215) 701-1151

Miscellaneous Docket Sheet

Docket Number: 116 MD 2016

Page 2 of 7

June 23, 2018



FEE INFORMATION

Fee Dt	Fee Name	Fee Amt	Receipt Dt	Receipt No	Receipt Amt
02/23/2016	Miscellaneous Docket Filing Fee	65.50	02/23/2016	2016-CMW-H-000445	65.50

AGENCY/TRIAL COURT INFORMATION

Court Below:
 County: Division:
 Order Appealed From: Judicial District:
 Documents Received: February 23, 2016 Notice of Appeal Filed:
 Order Type:
 OTN(s):
 Lower Ct Docket No(s):
 Lower Ct Judge(s):

ORIGINAL RECORD CONTENT

Original Record Item	Filed Date	Content Description
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Date of Remand of Record:

BRIEFING SCHEDULE

None None

DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
February 23, 2016	Objection to Nominating Petition Cohen, Mark		Petitioner	
February 24, 2016	Entry of Appearance Greenberg, Kevin Michael	Solomon, Jared	Respondent	
February 24, 2016	Order Filed Per Curiam			02/24/2016

Document Name: Scheduling and Case Management Order.

Miscellaneous Docket Sheet

Commonwealth Court of Pennsylvania

Docket Number: 116 MD 2016

Page 3 of 7

June 23, 2018



DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
	<p>Comment: 1. IT IS HEREBY ORDERED:</p> <p>A. Hearing on the petition to set aside nomination petition is scheduled for March 23, 2016 at 9:30 a.m., in Courtroom Number 2, The Widener Building, 1339 Chestnut Street, One South Penn Square, Pennsylvania. Objector is directed to secure the services of a court stenographer for the hearing. Failure of Objector to secure the services of a court stenographer may result in the dismissal of this matter.</p> <p>B. If signature lines are challenged, Objector shall secure, by request or subpoena, the presence of a Statewide Uniform Registry of Electors (SURE) system operator at the hearing.</p> <p>C. A pre-trial conference may be scheduled at any time after March 14, 2016.</p> <p>D. No later than 5:00 p.m., March 11, 2016, Objector shall personally serve a copy of this order, a copy of the petition to set aside nomination petitions (if the petition to set aside has not previously been served) and, if signature line challenges are at issue, one digital media device (CD or USB Flash Drive) containing the objections in spreadsheet format and a key to the codes used in the spreadsheet, on Jared Solomon, Candidate, or an adult member of Candidate's family. Objector shall file a proof of service wjth the Chief Clerk promptly thereafter.</p> <p>E-. -Objector-shall-person:al1y-or-byregistered-mail-serve-a-copy-of-this order on the Secretary of the Commonwealth and promptly thereafter file a proof of service with the Chief Clerk.</p> <p>F. At the time of hearing, Objector shall offer proof of timely service of the petition to set aside on the Secretary of the Commonwealth.</p> <p>G. All counsel are under a continuing obligation and are hereby ordered to serve a copy of this order upon all unrepresented parties, if any, and upon all counsel entering an appearance subsequent to the entry of this order.</p> <p>2. It is FURTHER ORDERED:</p> <p>A. Objector shall file a list of all witnesses to be called at the hearing and the curriculum vitae and expert reports of all expert witnesses. Any wjtness not identified shall be precluded from testifying except for good cause shown.</p> <p>B. Candidate shall file a list of all wjtnesses to be called at the hearing and the curriculum vitae and expert reports of all expert witnesses. Any witness not identified shall be precluded from testifying except for good cause shown.</p> <p>3. If signature line challenges are at issue, it is FURTHER ORDERED:</p> <p>A. Objector shall immediately arrange to meet with Candidate or Candidate's representative and, if appropriate, with a SURE system operator, to review before the hearing each and every challenged signature line.</p> <p>B. Objector and Candidate shall file a stipulation of the parties that</p> <p>(a) the total number of completed signature lines submitted;</p> <p>(b) the total number of uncontested signature lines submitted;</p> <p>(c) the total number of signature lines challenged;</p> <p>(d) each and every signature line to which there is an objection, identified by page number and line number, and the basis for the</p>			

Miscellaneous Docket Sheet

Docket Number: 116 MD 2016

Page 4 of 7

June 23, 2018



DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
	objection; (e) each and every signature line to be stricken as invalid or for which an objection is to be withdrawn, identified by page number and line number, if the parties can reach such a stipulation. C. Candidate shall file a list of all signature lines, identified by page number and line number, that are facially defective and that Candidate intends to rehabilitate. Candidate shall also state the manner in which Candidate intends to rehabilitate the signature lines. 4. Objector and Candidate may each file a memorandum of law in support of their respective positions by the time and date specified in paragraph 5 of this order. No further memoranda will be permitted unless ordered by the Court. 5. Unless otherwise ordered, all filings required or permitted by paragraphs 2, 3 and 4 of this order shall be filed no later than 12:00 o'clock noon on March 21, 2016 with the Chief Clerk at the Pennsylvania Judicial Center, Suite 2100, 601 Commonwealth Avenue, P.O. Box 69185, Harrisburg, PA 17106-9185. Parties may file via PACFile (the Pennsylvania appellate court electronic filing system) but may NOT file by facsimile or e-mail without express prior permission from the Court. 6. Failure to comply with any provision of this order may preclude the noncompliant party from entering any evidence, and may result in the imposition of monetary sanctions.			
March 10, 2016	Order Filed Colins, James G.			03/10/2016
	Document Name: the parties having requested that a pre-trial conference be scheduled for 3/14/16, Comment: IT IS HEREBY ORDERED that a pre-trial conference in this matter is scheduled for Monday, March 14, 2016, at 12:30 p.m., in Courtroom No. 1, 9th Floor, The Widener Building, One South Penn Square, Philadelphia, Pennsylvania. Objector is directed to bring a certified court reporter to transcribe the pre-trial conference. The parties shall be prepared to discuss at the pre-trial conference the status of their stipulations concerning signature line challenges, any motions on dispositive legal issues that they intend to file, and any issues that they wish to raise concerning witnesses that they intend to call at the March 23, 2016 hearing in this matter.			
March 11, 2016	Preliminary Objections Greenberg, Kevin Michael	Solomon, Jared	Respondent	
March 14, 2016	Answer to Preliminary Objections Paul, Robert E.	Cohen, Mark	Petitioner	
March 14, 2016	Filed - Other Paul, Robert E.	Cohen, Mark	Petitioner	
	Document Name: Objector's List of Witnesses			
March 18, 2016	Filed - Other Paul, Robert E.	Cohen, Mark	Petitioner	
	Document Name: Spreadsheet			

Miscellaneous Docket Sheet

Commonwealth Court of Pennsylvania

Docket Number: 116 MD 2016

Page 5 of 7

June 23, 2018



DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
March 18, 2016	Filed - Other Paul, Robert E. Document Name: Spreadsheet	Cohen, Mark	Petitioner	
March 18, 2016	Filed - Other Paul, Robert E. Document Name: Spreadsheet	Cohen, Mark	Petitioner	
March 18, 2016	Memorandum of Law Filed Paul, Robert E. Document Name: Brief In Support of Objection to the Nom. Pet. of Solomon	Cohen, Mark	Petitioner	
March 18, 2016	Petition to Set Aside Denied Colins, James G. Document Name: Memorandum Opinion (17 pages) Comment: AND NOW, this 18th day of March, 2016, upon consideration of the Preliminary Objections filed by Candidate Jared Solomon (Candidate), the response thereto filed by Objector Mark Cohen (Objector), the parties' stipulations, and oral argument held before the Court at the pre-trial conference in this case on March 14, 2016, IT IS HEREBY ORDERED that Candidate's Preliminary Objections are SUSTAINED and the Petition of Mark Cohen to Set Aside the Nomination Petitions of Jared Solomon is DENIED. The hearing in this matter scheduled for March 23, 2016 is CANCELLED. Costs shall be assessed upon Objector. The name Jared Solomon shall be permitted to appear on the ballot as a Democratic Candidate for State Representative for the 202nd Legislative District in the Primary Election of April 26, 2016. The Chief Clerk of the Commonwealth Court is directed to send a copy of this Order to the Secretary of the Commonwealth.			03/18/2016
March 21, 2016	Notice of Appeal to PA Supreme Court Filed Paul, Robert E. Document Name: 11 EAP 2016 Comment: Record forwarded to Eastern District on 3/22/16.	Cohen, Mark	Petitioner	
March 22, 2016	Certificate of Service Filed Commonwealth Court Filing Office Document Name: List of documents forwarded to counsel & all unrepresented parties pursuant to Pa. R.A.P. 1931(d).			
April 5, 2016	Commonwealth Court Decision Affirmed Supreme Court of Pennsylvania Document Name: Vacated in part. Portion of order imposing costs against Mark Cohen is vacated & remanded.			

Miscellaneous Docket Sheet

Commonwealth Court of Pennsylvania

Docket Number: 116 MD 2016

Page 6 of 7

June 23, 2018



DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
April 7, 2016	Order Filed Colins, James G.			04/07/2016

Document Name: AND NOW, this 7th day of April, 2016, in accordance with the direction of the Supreme Court

Comment: in its Order of April 5, 2016, this Court clarifies and sets forth the reasons for its assessment of costs in its Order of March 18, 2016

as follows. The Court's assessment of costs against Objector in its Order of March 18, 2016 consists only of the cost, if any, to the Court and Candidate, of the court reporter for the pretrial conference of March 14, 2016 and any transcription of that conference. It does not include any attorneys' fees, witness fees or any other fees or costs. Assessment of this one item of costs against Objector is just

and appropriate for three reasons. First, assessment of costs may be just, even where there is no showing of bad faith, frivolous conduct, or harassment, where the losing party should have known that its chance of success was remote and that its legal position was

contrary to existing precedent. In re Nomination Petition of Farnese, 17 A.3d 357, 372 (Pa. 2011). As of March 11, 2016, before the pretrial conference, Objector had already concluded that Candidate had a more than sufficient number of valid signatures to remain on the ballot unless Objector prevailed on his global challenges. Objector's global challenges that could have reduced Candidate's valid signatures below the required number consisted of three legal arguments that were either contrary to existing precedent or unsupported by any precedent or statutory language. Second, one of the primary considerations that weighs against awarding costs against an objector in an election case is the compressed, one-week time period within which objectors must examine nomination petitions and file their challenges. Farnese, 17 A.3d at 372-73. At the time that this item of costs was incurred, Objector had had almost three additional weeks after filing his challenge to decide whether to proceed and was therefore not operating under the time pressures that militate against assessment of costs. Finally, the amount of costs assessed by the Court is, at most, de minimis, and would therefore have no chilling effect on parties in election contests. Indeed, no transcript of the March 14, 2016 pretrial conference was filed and the

Court has received no bill from the court reporter. It is also unclear whether Candidate, who has not filed any itemization of costs to date, ordered a transcript or incurred any costs with respect to the court reporter's services. Unless Candidate timely files a bill of costs setting forth an amount incurred for a transcript of the March 14, 2016 pretrial conference or the court reporter's services, Objector is under no order to pay any amount of costs.

DISPOSITION INFORMATION

Final Disposition:	Yes	Judgment Date:	
Related Journal No:		Disposition Author:	Colins, James G.
Category:	Decided	Disposition Date:	March 18, 2016
Disposition:	Petition to Set Aside Denied		
Disposition Comment:	AND NOW, this 18th day of March, 2016, upon consideration of the Preliminary Objections filed by Candidate Jared Solomon (Candidate), the response thereto filed by Objector Mark Cohen (Objector), the parties' stipulations, and oral argument held before the Court at the pre-trial conference in this case on March 14, 2016, IT IS HEREBY ORDERED that Candidate's Preliminary Objections are SUSTAINED and the Petition of Mark Cohen to Set Aside the Nomination Petitions of Jared Solomon is DENIED. The hearing in this matter scheduled for March 23, 2016 is CANCELLED. Costs shall be assessed upon Objector. The name Jared Solomon shall be permitted to appear on the ballot as a Democratic Candidate for State Representative for the 202nd Legislative District in the Primary Election of April 26, 2016. The Chief Clerk of the Commonwealth Court is directed to send a copy of this Order to the Secretary of the Commonwealth.		

Miscellaneous Docket Sheet

Docket Number: 116 MD 2016

Page 7 of 7

June 23, 2018



DISPOSITION INFORMATION

Dispositional Filing: **Memorandum Opinion**
Filed Date: 3/18/2016 12:00:00AM

Filing Author: Colins, James G.