

**STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT**

**In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to**

DANIEL J. McCULLOUGH,

STIPULATION

**A Judge of the Court of Claims and an
Acting Justice of the Supreme Court,
1st Judicial District, New York County.**

THE FOLLOWING IS HEREBY STIPULATED by and between Robert H.

Tembeckjian, Administrator and Counsel to the Commission, and the Honorable Daniel J.

McCullough and his attorney, Roger Bennet Adler, of Roger Bennet Adler, P.C.

1. Daniel J. McCullough was admitted to the practice of law in New York in 1996. He has been a Judge of the Court of Claims and an Acting Justice of the Supreme Court, New York County, since November 29, 2010. His current term expires on May 29, 2019.

2. Judge McCullough was apprised by the Commission in October 4, 2016, that it was investigating a complaint alleging that he had been unable to fulfill the duties of his judicial office for an extended period of time due to his poor physical health.

3. Judge McCullough was served with the attached the Formal Written Complaint on May 9, 2017. (See Exhibit 1)

4. Thereafter, the Commission was provided with a copy of Respondent's application for retirement filed on May 5, 2017 and effective May 29, 2017.

5. Judge McCullough acknowledges his physical health is such that he is unable to return to his judicial duties in the foreseeable future.

6. Judge McCullough affirms that he will vacate judicial office as of May 29, 2017, and that he will neither seek nor accept judicial office at any time in the future.

7. Judge McCullough understands that, should he abrogate the terms of this Stipulation, withdraw his retirement application and/or hold any judicial position at any time in the future, the present proceedings before the Commission would be revived, and the matter would proceed to a hearing before a referee.

8. Pursuant to Section 47 of the Judiciary Law, the Commission has 120 days from the date of a judge's resignation to complete proceedings, and if the Commission determines that the judge should be removed from office, file a determination with the Court of Appeals.

9. Upon execution by the signatories below, this Stipulation will be presented to the Commission with the joint recommendation that the matter be concluded, by the terms of this Stipulation, without further proceedings.

10. Judge McCullough waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (1) this Stipulation will become public upon being signed by the signatories below, and (2) the Commission's Decision and Order regarding this Stipulation will become public.


Dated:

5/15/17


Honorable Daniel J. McCullough

Dated:

5/15/17


Roger Bennet Adler
Roger Bennet Adler, P.C.
Attorney for Judge McCullough

Dated:

5/15/17



Robert H. Tembeckjian
Administrator and Counsel to the Commission
(Brenda Correa, Of Counsel)

EXHIBIT 1

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

DANIEL J. McCULLOUGH,

A Judge of the Court of Claims and an
Acting Justice of the Supreme Court,
1st Judicial District, New York County.

**NOTICE OF FORMAL
WRITTEN COMPLAINT**

NOTICE is hereby given to Respondent, Daniel J. McCullough, a Judge of the Court of Claims and an Acting Justice of the Supreme Court, 1st Judicial District, New York County, pursuant to Section 44, subdivision 4, of the Judiciary Law, that the State Commission on Judicial Conduct has determined that cause exists to serve upon Respondent the annexed Formal Written Complaint; and that, in accordance with said statute, Respondent is requested within twenty (20) days of the service of the annexed Formal Written Complaint upon him to serve the Commission at its New York office, 61 Broadway, Suite 1200, New York, New York 10006, with his verified Answer to the specific paragraphs of the Complaint.

Dated: May 4, 2017
New York, New York

ROBERT H. TEMBECKJIAN
Administrator and Counsel
State Commission on Judicial Conduct
61 Broadway, Suite 1200
New York, New York 10006
(646) 386-4800

To: Roger Bennet Adler, P.C.
Attorney for Respondent
233 Broadway, Suite 1800
New York, New York 10279

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

**FORMAL
WRITTEN COMPLAINT**

DANIEL J. McCULLOUGH,

A Judge of the Court of Claims and an
Acting Justice of the Supreme Court,
1st Judicial District, New York County.

1. Article 6, Section 22, of the Constitution of the State of New York establishes a Commission on Judicial Conduct ("Commission"), and Section 44, subdivision 4, of the Judiciary Law empowers the Commission to direct that a Formal Written Complaint be drawn and served upon a judge.

2. The Commission has directed that a Formal Written Complaint be drawn and served upon Daniel J. McCullough ("Respondent"), a Judge of the Court of Claims and an Acting Justice of the Supreme Court, 1st Judicial District, New York County.

3. The factual allegations set forth in Charges I and II state acts of judicial misconduct by Respondent in violation of the Rules of the Chief Administrator of the Courts Governing Judicial Conduct ("Rules").

4. Respondent was admitted to the practice of law in New York in 1996. He has been a Judge of the Court of Claims and an Acting Justice of the Supreme Court, 1st Judicial District, New York County, since November 29, 2010. Respondent's term expires on May 29, 2019.

CHARGE I

5. Respondent has persistently failed to perform his judicial duties from in or about April 2014 to the present.

Specifications to Charge I

6. Article 6, Section 22, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law authorize the Commission to discipline a judge for the “persistent failure to perform his duties.”

7. From in or about April 2014 to the present, Respondent has persistently failed to report for work and/or to perform his judicial duties.

8. From in or about April 2014 to the present, Respondent has not reported to chambers for work.

9. From in or about April 2014 to the present, Respondent has not taken the bench to preside over cases.

10. From in or about April 2014 to the present, Respondent has not decided any motions.

11. From in or about April 2014 to the present, Respondent has not rendered any judicial decisions.

12. From in or about April 2014 to the present, Respondent has not otherwise handled any cases.

13. From in or about April 2014 to the present, Respondent has not fulfilled other responsibilities of his judicial office.

14. Notwithstanding the foregoing, Respondent has drawn his judicial salary from in or about April 2014 to the present.

15. By reason of the foregoing, Respondent should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law, in that Respondent persistently failed to perform his duties in violation of those provisions, and in that he failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules; and failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules.

CHARGE II

16. Respondent should be retired from judicial office because a physical disability has prevented him from properly performing his judicial duties from in or about April 2014 to the present.

Specifications to Charge II

17. Article 6, Section 22, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law authorize the Commission to retire a judge for “mental or physical disability preventing the proper performance of his judicial duties.”

18. From in or about April 2014 to the present, Respondent has neither reported for work nor performed his judicial duties.

19. From in or about April 2014 to the present, Respondent has been confined for significant periods of time to various hospitals and rehabilitation centers including, but not limited to, the Glen Cove Center for Nursing and Rehabilitation, Glen Cove Hospital, and Weill Cornell Medical Center, due to a physical disability related to, *inter alia*, severe anemia, a degenerative spinal condition, spinal surgery, paralysis of the lower extremities, and/or other extremely serious physical ailments.

20. In or about December 2014, Respondent was directed by then-Chief Administrative Judge A. Gail Prudenti to undergo a medical examination to determine his fitness to return to the bench, pursuant to 22 NYCRR 113.

21. On or about December 15, 2014, Respondent was medically examined by Dr. Avram L. Nemetz. In his report of the examination, Dr. Nemetz indicated that Respondent had “a complicated medical history which involves morbid obesity, multi-level degenerative changes and herniated disks in his lower back, status post left hip replacement, intestinal bleeding and continued anemia after a gastric sleeve procedure, with a bone marrow biopsy planned.” The report noted, *inter alia*, that Respondent was not ready to return work and that it was “not possible to estimate a particular date when he might return.” In addition, the report stated that the “underlying causes” of Respondent’s “problems have not been fully assessed or determined, particularly the question of whether he is bleeding persistently and iron deficient because he can’t absorb

iron, or whether his bone marrow has shut down and is not producing red blood cells, which would be a much more serious condition.”

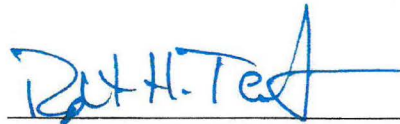
22. On or about November 6, 2015, Respondent was directed by Chief Administrative Judge Lawrence K. Marks, of the Office of Court Administration for the Unified Court System, to undergo another medical examination pursuant to 22 NYCRR 113. Respondent did not comply with this request.

23. Notwithstanding the foregoing, Respondent has drawn his judicial salary from in or about April 2014 to the present.

24. By reason of the foregoing, Respondent should be retired from judicial office, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law, in that Respondent has a physical disability that prevents the proper performance of his judicial duties, and in that he thereby failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules; and failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules.

WHEREFORE, by reason of the foregoing, the Commission should take whatever further action it deems appropriate in accordance with its powers under the Constitution and the Judiciary Law of the State of New York.

Dated: May 4, 2017
New York, New York



ROBERT H. TEMBECKJIAN
Administrator and Counsel
State Commission on Judicial Conduct
61 Broadway, Suite 1200
New York, New York 10006
(646) 386-4800

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

VERIFICATION

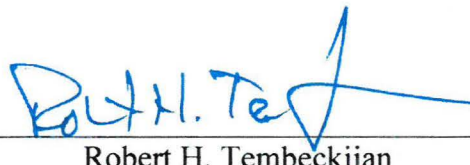
DANIEL J. McCULLOUGH,

A Judge of the Court of Claims and an
Acting Justice of the Supreme Court,
1st Judicial District, New York County.

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

ROBERT H. TEMBECKJIAN, being duly sworn, deposes and says:

1. I am the Administrator of the State Commission on Judicial Conduct.
2. I have read the foregoing Formal Written Complaint and, upon information
and belief, all matters stated therein are true.
3. The basis for said information and belief is the files and records of the State
Commission on Judicial Conduct.



Robert H. Tembeckjian

Sworn to before me this
4th day of May 2017



Notary Public

LATASHA Y. JOHNSON
Notary Public, State of New York
No. 01JO6235579
Qualified in New York County
Commission Expires FEB. 14, 2019