

COURT OF APPEALS
STATE OF NEW YORK

Matter of Hon. Erin P. Gall,

Petitioner,

- against-

New York State Commission on
Judicial Conduct,

Respondent.

**AFFIRMATION IN
RESPONSE TO
PETITIONER'S MOTION
TO WITHDRAW THE
PENDING REQUEST FOR
REVIEW PURSUANT TO
PART 530 OF THE COURT'S
RULES**

Index No.: JCR-2024-00007

ROBERT H. TEMBECKJIAN, an attorney duly admitted to practice in the State of New York, hereby affirms and states the following to be true under the penalties of perjury:

1. I am the Administrator of the New York State Commission on Judicial Conduct ("Commission"), the Respondent in this proceeding. I am fully familiar with the facts and circumstances set forth herein.

2. I file this affirmation in response to Petitioner's motion to withdraw her requested review of the Commission's determination in the above-captioned matter or alternatively to have the matter considered on the briefs, without oral argument.

3. As set forth more fully below, the Commission offers information for the Court's consideration but neither opposes nor consents to the motion, leaving the matter to the sound discretion of the Court.

Procedural Background

4. The Commission filed a determination dated July 17, 2024, that Petitioner should be removed from judicial office.

5. This Court suspended Petitioner, with pay, on July 31, 2024.

6. Petitioner requested review of the Commission's determination by letter dated August 16, 2024. She perfected the request by filing the Record on Review and a brief dated September 12, 2024.

7. The Commission filed its brief dated October 10, 2024, and Petitioner filed her reply brief dated October 22, 2024.

8. The Court scheduled oral argument for January 9, 2025.

The Commission Meeting of December 12, 2024

9. In the months after Petitioner filed her record and brief, it was reported to me by at least two court administrators and an attorney in private practice that, since being suspended with pay, Petitioner had been actively looking for a new job and might or would abandon this requested review before the oral argument date. At its regularly scheduled meeting on December 12, 2024, the Commission considered how to respond to an expected request by Petitioner for a stipulation of withdrawal pursuant to Court Rule 530.10.¹

¹ Petitioner's own description of her vigorous job-seeking efforts since perfecting her review in September (Gall Aff. ¶5) corroborated the information earlier reported to me and contributed to the Commission's concern that this request for review may be disingenuous.

10. The Commission unanimously advised me not to stipulate to withdrawal, for several reasons, including the following:

- A. Historically, the Commission has stipulated to withdrawal in those rare situations where a petitioner requested it prior to the filing of a record and briefs. *See Matter of Michael F. McGuire.*² Here, Petitioner perfected her request for review, then sought withdrawal more than three months later, long after issue had been joined.
- B. The Commission’s reluctance to stipulate to a withdrawal after issue has been joined is rooted in a concern that facilitating an eleventh-hour withdrawal might encourage some judges to request review in bad faith, solely for the purpose of extending the time they would continue to collect a full judicial salary, while simultaneously avoiding a decision on the merits by this Court as to the Commission’s removal determination.³
- C. Several significant substantive and procedural issues are before the Court, both as addressed in the Commission’s removal determination and as raised by Petitioner’s challenge to it, including (i) the appropriate discipline for what was determined to be a racially charged off-the-bench tirade in which Petitioner *inter alia* invoked gun violence, expressed bias in favor of law enforcement, and denigrated the importance of extreme risk protection orders, (ii) Petitioner’s attempt to explain her misconduct in part by belatedly ascribing it to a past trauma, and (iii) Petitioner’s invocation of a specious “missing witness” claim

² Sullivan County and Surrogate’s Courts Judge Michael F. McGuire filed a request for review dated April 15, 2020, was suspended with pay on April 30, 2020, and sought to withdraw his request for review on May 14, 2020, prior to perfecting the request by filing a Record on Review or a brief. Consistent with Court Rule 530.10, he and the Commission then entered into a stipulation of withdrawal, dated June 3, 2020. The Court thereafter issued an order pursuant to Judiciary Law §44(7), removing him from office. *See, Michael F. McGuire*, <https://cjc.ny.gov/Determinations/M/McGuire.htm>.

³ The annual salary for a Justice of the Supreme Court is \$232,600. *See Unified Court System Bulletin No. UCS-341*: <https://www.osc.ny.gov/state-agencies/payroll-bulletins/unified-court-system/ucs-341-april-2024-salary-increase-judges-justices-and-new-york-city>. From the date this Court suspended Petitioner with pay, she has collected approximately \$96,000 in salary.

that she waived upon stipulating to the facts in lieu of a hearing pursuant to Judiciary Law §44(5).

- D. In this matter, the Commission was concerned that its acquiescence to an eleventh-hour withdrawal might (i) appear to condone a petitioner's disingenuous use of the review process for personal financial gain, and (ii) preclude the Court from deciding the important issues raised in this case, should it so wish.

Petitioner's Motion to Withdraw Her Requested Review

11. Several hours after the Commission adjourned its meeting of December 12, 2024, Petitioner's attorney telephoned me (A) to advise that Petitioner intended to resign her judicial office at some unspecified date, and (B) to request that I stipulate to the withdrawal of her requested review. The call was very brief. He did not tell me Petitioner had a new job, nor did he mention any safety concerns – both of which were raised for the first time in Petitioner's motion papers.⁴

12. I told Petitioner's attorney that the Commission had considered the matter in anticipation of such a request and had advised me not to stipulate. He asked whether I was going to make him appear for oral argument in this case,⁵ and

⁴ While there is no evidence on which to evaluate the nature and validity of the purported safety concerns, the Commission condemns any threats of violence to judicial officers, their families, or anyone else.

⁵ Petitioner's attorney and I have a cordial relationship, and his question about oral argument was expressed in the friendly banter characteristic of our conversations.

I replied that would be for the Court to decide, and he was free to make whatever application he deemed appropriate.

13. In papers dated December 17, 2024, Petitioner filed the instant motion, pursuant to Court Rule 530.8, (A) seeking to withdraw her requested review, which if granted would result in the Court's issuance of a *pro forma* order removing her from judicial office in accordance with the findings of the Commission, pursuant to Judiciary Law §44(7), or (B) in the alternative, for the Court to decide the matter on the submissions, without oral argument.

14. Petitioner's motion includes her affidavit stating *inter alia* that the arguments in her prior submissions to the Court were "meritorious," that she has vigorously sought and has now found other employment in anticipation of leaving the bench, that she wishes to avoid a repetition of the media attention that ensued when the Commission's removal determination was filed and became public as a matter of law,⁶ and that she submitted a letter of resignation dated December 15, 2024, effective January 1, 2025, inasmuch as she is commencing her new job on January 2, 2025.⁷ See Gall Aff. ¶¶ 4-8.

15. Petitioner's affidavit accepts that, were the Court to grant her motion to withdraw, it would issue an order removing her from the bench, as required by

⁶ Judiciary Law §44(7).

⁷ On information and belief, Petitioner's new position is as an Assistant County Attorney for Herkimer County.

law. Petitioner asks that any such order contain “no specific findings other than removal,” ostensibly “to help lessen any potential harm to my family due to social media and national news exposure.” Gall Aff. ¶ 9.

16. Petitioner’s affidavit also addresses one of the substantive issues in this case, in that she asks the Court not to issue any order that might “characterize” her conduct and “stigmatize” her as “racially motivated.” Gall Aff. ¶ 9.⁸ In essence, Petitioner asks the Court to confirm her removal in a manner that would permit her to continue to claim the Commission’s determination was wrong, notwithstanding that pursuant to Judiciary Law 44(7), “if the judge accepts such determination or fails to request a review thereof by the court of appeals, the court of appeals shall thereupon order his [or her] removal or retirement in accordance with the findings of the commission” (emphasis added).

The Commission’s Position on the Pending Motion

17. Having set forth the information herein for the Court’s consideration, the Commission neither opposes nor consents to Petitioner’s motion, but defers to the sound judgment and discretion of the Court on the disposition of the matter, recognizing that the Court may:

⁸ The Commission’s determination found that Petitioner’s conduct created “at least the appearance of racial bias,” a fact to which she stipulated in the Agreed Statement of Facts (R27, R30, R34).

- A. Accept Petitioner’s application to withdraw and issue a *pro forma* removal order, which perforce would disqualify her from ever returning to the bench;⁹
- B. Accept Petitioner’s alternative request to render a decision on the merits of this case without oral argument; or
- C. Direct whatever further action it deems appropriate in accordance with its authority under the Constitution and the Judiciary Law. Were the Court to schedule oral argument, for example, I would appear as directed on the Commission’s behalf.¹⁰

18. Petitioner’s resignation while this matter is pending does not divest the Court of jurisdiction in this matter, pursuant to Judiciary Law §47.

Affirmation

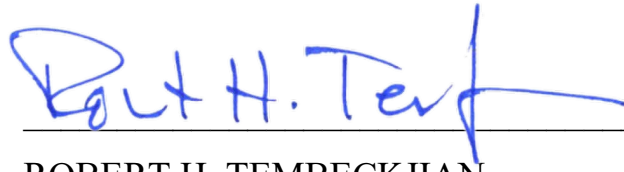
19. I affirm this 30th day of December 2024, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

WHEREFORE, having presented information pertinent to the Court’s consideration of Petitioner’s motion, the Commission respectfully defers to the Court without recommendation and is ready to act in accordance with whatever relief the Court deems appropriate.

⁹ A judge who is removed from office is ineligible to hold other judicial office, pursuant to Article VI, Section 22(h) of the Constitution.

¹⁰ In view of Petitioner’s resignation from judicial office effective January 1, 2025, the Commission’s concern about prolonging the review process for a petitioner’s financial benefit is now moot in this case.

Dated: December 30, 2024
Albany, New York



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