

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

DETERMINATION

CARLOS GONZALEZ,

a Justice of the Elmsford Village Court,
Westchester County.

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Jodie Corngold
Honorable John A. Falk
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller¹
Marvin Ray Raskin, Esq.
Ronald J. Rosenberg, Esq.
Graham B. Seiter, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Mark Levine and Melissa DiPalo, Of Counsel)
for the Commission

Honorable Carlos Gonzalez, *pro se*

¹ The vote in this matter was taken on March 17, 2022. Judge Miller's term as a member of the Commission expired on March 31, 2022.

Respondent, Carlos Gonzalez, a Justice of the Elmsford Village Court, Westchester County, was served with a Formal Written Complaint (“Complaint”) dated December 14, 2021, containing one charge. The Complaint alleged that respondent failed to conduct his extra-judicial activities so that they did not detract from the dignity of judicial office when he engaged in professional misconduct in his capacity as an attorney as evidenced by two orders by the Appellate Division, Second Department which suspended him from the practice of law in New York for a total of 24 months.

By motion dated January 14, 2022, the administrator of the Commission moved for summary determination pursuant to Section 7000.6(c) of the Commission’s Operating Procedures and Rules. On January 25, 2022, respondent submitted written opposition to the motion along with an untimely and undated Answer in which he acknowledged the facts underlying his suspension from the practice of law. By decision and order dated February 3, 2022, the Commission granted the administrator’s motion and determined that the factual allegations of the Complaint were sustained and that respondent’s misconduct was established.

By letter dated February 3, 2022, the Commission set a schedule for briefs and oral argument on the issue of sanction. On February 18, 2022, the administrator of the Commission submitted a memorandum which argued for respondent’s removal. Respondent did not make a submission on the issue of

sanction and did not respond to the administrator's sanction memorandum. On March 17, 2022, the Commission heard oral argument via videoconference by Commission counsel and respondent on the issue of sanction and thereafter considered the record of the proceedings and made the following findings of fact.

1. Respondent was admitted to the practice of law in New York in 2005. He has been a Justice of the Elmsford Village Court, Westchester County, since April 5, 2021. Respondent's term expires on March 16, 2025.

2. By opinion and order dated April 14, 2021, the Appellate Division, Second Department, suspended respondent from the practice of law in New York for six months, effective May 14, 2021, based upon a finding of professional misconduct underlying a public reprimand imposed by an order of the United States District Court for the District of Connecticut, Western Connecticut ("District Court"), dated May 4, 2017.² A copy of the Appellate Division's opinion and order is appended as Exhibit A to the Complaint. Copies of the District Court's order, the Stipulated Disposition and the Motion for Approval of Proposed Stipulated Disposition are appended as Exhibit A-1 to the Complaint.

3. By opinion and order dated December 8, 2021, the Appellate Division, Second Department, suspended respondent from the practice of law for 18 months,

² The Appellate Division found, *inter alia*, in aggravation, that respondent failed to timely notify the Court of the Connecticut discipline in violation of 22 NYCRR 1240.13(d).

effective November 14, 2021, for engaging in professional misconduct and a lack of candor before the Grievance Committee for the Ninth Judicial District. This discipline was imposed on consent and was based upon respondent's acknowledged misconduct in connection with five matters. The Court also found that respondent lacked candor when he failed to accurately describe his disciplinary history to the Grievance Committee. The Appellate Division ordered that respondent's 18-month suspension run consecutive to the 6-month suspension previously imposed by order dated April 14, 2021. A copy of the Appellate Division's opinion and order is appended as Exhibit B to the Complaint.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A) and 100.4(A)(2) of the Rules Governing Judicial Conduct ("Rules") and should be disciplined for cause pursuant to Article VI, Section 22, subdivision (a) of the Constitution and Section 44, subdivision 1 of the Judiciary Law. Charge I of the Complaint is sustained and respondent's misconduct is established.

Each judge is obligated to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary" and must observe high standards of conduct "so that the integrity and independence of the judiciary will be preserved." (Rules, §§100.1 and 100.2(A)) Each judge must also "conduct all of the judge's extra-judicial activities so that they do not . . . detract from the

dignity of judicial office.” (Rules §100.4(A)(2)) Judges have been disciplined based on prior attorney disciplinary proceedings. *Matter of Embser*, 90 N.Y.2d 711, 715 (1997) (summary determination based upon findings of prior attorney disciplinary proceeding); *Matter of Tamsen*, 100 N.Y.2d 19, 21 (2003) (summary determination based on prior attorney disbarment proceeding appropriate when respondent was given the opportunity to be heard on issues of law and sanction). Relying upon the findings set forth in the April 14, 2021 and December 8, 2021 orders of the Appellate Division, Second Department which suspended him from the practice of law, we find that respondent failed to comply with the Rules when he engaged in professional misconduct as an attorney and lacked candor before the Grievance Committee.³

It is well-settled that judges are held to a higher standard of conduct than the general public. *Matter of Kuehnel*, 49 N.Y. 2d 465, 469 (1980) (“[s]tandards of conduct on a plane much higher than for those of society as a whole, must be observed by judicial officers so that the integrity and independence of the judiciary will be preserved. A Judge must conduct his everyday affairs in a manner beyond reproach.”); *Matter of Lonschein*, 50 N.Y.2d 569, 572 (1980) (“[m]embers of the judiciary should be acutely aware that any action they take, whether on or off the

³ In his Answer, respondent acknowledged the facts underlying his suspension from the practice of law.

bench, must be measured against exacting standards of scrutiny to the end that public perception of the integrity of the judiciary will be preserved.” (citation omitted)). In addition, judges have been disciplined for engaging in serious misconduct as an attorney. *Matter of Tamsen, supra*, 100 N.Y.2d at 22; *Matter of Embser, supra*, 90 N.Y. 2d at 712; *Matter of Boulanger*, 61 N.Y. 2d 89, 92 (1984). By his conduct, respondent brought reproach upon the judiciary and undermined public confidence in the court system.

Given the seriousness of respondent’s professional misconduct as evidenced by his two suspensions from the practice of law, as well as the Court’s finding that he lacked candor in his dealings with the Grievance Committee, we believe that respondent should be removed from the bench to protect the integrity of the courts. We are mindful that “removal, the ultimate sanction, should not be imposed for misconduct that amounts simply to poor judgment or even extremely poor judgment, but should be reserved for truly egregious circumstances.” *Matter of Mazzei*, 81 N.Y.2d 568, 572 (1993) (citations omitted). Here, respondent engaged in a pattern of professional misconduct which involved six separate client matters. Moreover, the Appellate Division, Second Department specifically found that he lacked candor. Under these circumstances, removal is required.

We reject respondent’s contention that he should not be removed because there is no requirement that he must be an attorney in order to serve in his judicial

position. Respondent was suspended from the practice of law and is precluded from appearing in court as an attorney during his suspension. Allowing him to remain on the bench would significantly undermine public confidence in the dignity and integrity of the judiciary.⁴

The Court of Appeals has held that, “[t]he purpose of judicial disciplinary proceedings is to impose sanctions where needed to protect the bench from unfit incumbents.” *Matter of Senzer*, 35 N.Y.3d 216, 219 (2020) (citations omitted) Respondent’s professional misconduct and his lack of candor demonstrated that he is unfit for judicial office.

By reason of the foregoing, the Commission determines that the appropriate disposition is removal.

Mr. Belluck, Ms. Grays, Judge Camacho, Ms. Corngold, Judge Falk, Judge Mazzairelli, Judge Miller, Mr. Raskin, Mr. Rosenberg, Mr. Seiter and Ms. Yeboah concur.

⁴ We also reject respondent’s argument that he should not be disciplined because his misconduct took place before he became a judge. Judges have been disciplined for misconduct prior to taking the bench. *Matter of Tamsen*, 2003 NYSCJC Annual Report 167, 170, *aff’d*, 100 N.Y.2d 19 (2003) (“[r]espondent’s removal is warranted even though his misconduct predates his ascension to the bench. . .”); *Matter of DiStefano*, 2005 NYSCJC Annual Report 145, 148.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission
on Judicial Conduct.

Dated: April 13, 2022



Celia A. Zanner, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct