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February 18, 2022

Via First Class Mail and Email: [REDACTED]@cjc.ny.gov

Celia Zahner, Esq.
Clerk of the Commission
New York State Commission on Judicial Conduct
61 Broadway, Suite 1200
New York, New York 10006

Re: Matter of Carlos Gonzalez

Dear Ms. Zahner:

Enclosed please find Commission Counsel's memorandum in support of the recommendation that Respondent be removed from office. A copy of the same is being served on Respondent via email and UPS overnight mail.

Very truly yours,

Melissa DiPalo
Senior Attorney

cc: Hon. Carlos Gonzalez

Via Email:

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-and-

Via UPS Overnight Mail:

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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

CARLOS GONZALEZ,

a Justice of the Elmsford Village Court,
Westchester County.

**MEMORANDUM BY COUNSEL TO THE COMMISSION
IN SUPPORT OF RECOMMENDATION THAT
RESPONDENT BE REMOVED FROM OFFICE**

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Dated: February 18, 2022

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PRELIMINARY STATEMENT

This Memorandum is respectfully submitted by Counsel to the Commission on Judicial Conduct (“Commission”) in support of the recommendation that the Honorable Carlos Gonzalez (“Respondent”) should be removed from office for the misconduct described in Commission Counsel’s motion for summary determination on January 14, 2022, which the Commission granted on February 3, 2022.

INTRODUCTION

Respondent is currently a suspended attorney, having twice been suspended from the practice of law for multiple, serious acts of client neglect and a lack of candor before the Grievance Committee. Respondent does not dispute the Appellate Division’s factual findings, including his repeated lack of candor, under oath. Any discipline less than removal would be a disservice to the public, to the litigants that appear before Respondent, and to the judiciary as a whole.

PROCEDURAL HISTORY

A. The Formal Written Complaint

Pursuant to Judiciary Law § 44(4), the Commission authorized a Formal Written Complaint (“Complaint”), dated December 14, 2021, containing one charge. It alleged that by orders dated April 14, 2021, and December 8, 2021, the Appellate Division, Second Department, suspended Respondent from the practice of law for a total of 24 months, from May 14, 2021, to November 14, 2022, for engaging in repeated acts of professional misconduct in his capacity as an attorney.

The Complaint alleged that on April 14, 2021, the Appellate Division, Second Department suspended Respondent from the practice of law for six months based upon a finding of professional misconduct underlying a public reprimand for client neglect imposed by the United States District Court for the District of Connecticut, Western Connecticut (“Connecticut District Court”). The Complaint further alleged that eight months later, on December 8, 2021, the Appellate Division, Second Department, suspended Respondent from the practice of law for 18 months, for engaging in professional misconduct related to additional client neglect, as well as a lack of candor before the Grievance Committee for the Ninth Judicial District (“Grievance Committee”).

B. Respondent’s Answer

Respondent filed an undated Answer, in which he admitted the factual allegations in the Complaint. Specifically, Respondent “acknowledge[d] the facts presented as true to [his] suspension from the practice of law” and stated that he “believe[d] these facts are incontrovertible.” (Respondent’s Answer, at 1).¹

C. Motion for Summary Determination

By motion papers dated January 14, 2022, Commission Counsel moved for summary determination and a finding that the allegations in the Complaint constituted judicial misconduct.

¹ Respondent filed his Answer on January 25, 2022, at the time he filed his opposition to the motion for summary determination described below.

D. Respondent's Opposition to Motion

Respondent filed answering papers on January 25, 2022, opposing the motion for summary determination. Respondent acknowledged that the facts presented in Commission Counsel's motion concerning his 24-month suspension from the practice of law were "uncontroverted" (Respondent's Opposition to Motion for Summary Determination, at 1) and "true" (*id.* at 2), but argued that his misconduct as an attorney predated his ascension to the bench and related to conduct outside his judicial office. Respondent further alleged that there are "no allegations of any misconduct on the bench" (*id.*), and that he is not required to be an admitted attorney to hold the position of Elmsford Village Justice.

E. The Commission's Decision and Order

By decision and order dated February 3, 2022, the Commission granted Commission Counsel's motion for summary determination. The Commission found that Charge I of the Complaint was sustained and determined that Respondent's misconduct was established.

ARGUMENT

POINT

**RESPONDENT'S SERIOUS MISCONDUCT AS AN ATTORNEY
AND HIS LACK OF CANDOR WHILE UNDER OATH IN AN
ATTORNEY DISCIPLINARY PROCEEDING COMPELS HIS
REMOVAL FROM OFFICE.**

Respondent's longstanding pattern of neglecting client matters as an attorney, and his lack of candor before the Attorney Grievance Committee, constitutes serious

professional misconduct for which he was twice suspended as an attorney for a cumulative total of 24 months. That same misconduct compels his removal from judicial office, as the public cannot have confidence in a judge who has been deemed unfit to practice law as an attorney and lied during his attorney disciplinary proceedings to boot.

The Court of Appeals has long held that “a Judge cannot simply cordon off his public role from his private life and assume safely that the former will have no impact upon the latter.” *Matter of Steinberg*, 51 NY2d 74, 81 (1980). Even ““relatively slight improprieties subject the judiciary as a whole to public criticism and rebuke”” and thus, it is “imperative to also consider ‘the effect of the Judge’s conduct on and off the Bench upon public confidence in his [or her] character and judicial temperament.’” *Matter of Tamsen*, 100 NY2d 19, 21-22 (2003) quoting *Aldrich v State Commn on Jud Conduct*, 58 NY2d 279, 283 (1983).

While “[r]emoval is an extreme sanction” that is appropriate “only in the event of truly egregious circumstances,” the Court of Appeals repeatedly has recognized that “the truly egregious standard is measured with due regard to the fact that Judges must be held to a higher standard of conduct than the public at large.” *Matter of O’Connor*, 32 NY3d 121, 127 (2018); see also *Matter of Astacio*, 32 NY3d 131, 135 (2018); *Matter of Collazo*, 91 NY2d 251, 255 (1998). Additionally, making false statements, or engaging in deceitful or dishonest conduct, is both inimical to the role of a judge and an aggravating factor that elevates the required sanction. See *Collazo*, 91 NY2d at 255.

The Court of Appeals repeatedly has held that removal from the bench is appropriate where the judge engaged in serious misconduct as an attorney. See *Matter of*

Mason, 100 NY2d 56, 58 (2003); *Matter of Tamsen*, 100 NY2d at 22; *Matter of Embser*, 90 NY2d 711, 715 (1997); *Matter of Boulanger*, 61 NY2d 89, 92 (1984); *see also Matter of Fitzgerald*, 100 NY2d 52, 54 (2003). That Respondent’s misconduct as an attorney did not directly involve his judicial duties does not preclude the Commission from removing him from judicial office. *See Tamsen*, 100 NY2d at 22 (removing town court justice for misappropriation of client funds as an attorney, which resulted in his disbarment, “notwithstanding that all of the wrongdoings related to conduct outside his judicial office”); *Boulanger*, 61 NY2d at 92; *see also Matter of Senzer*, 35 NY3d 216, 220 (2020) (part-time village justice removed for making vulgar and offensive statements as an attorney “notwithstanding the fact that he was not functioning in his judicial capacity at the time that it occurred”). Nor does the fact that Respondent’s misconduct predated his ascension to the bench prevent the Commission from imposing discipline. *See Matter of DiStefano*, 2005 Ann Rep 145, 148 (Comm’n on Jud Conduct Nov 12, 2004); *Matter of Tamsen*, 2003 Ann Rep 167, 169-70 (Comm’n on Jud Conduct July 2, 2002) *aff’d* 100 NY2d 19 (2003); *Matter of Mason*, 2003 Ann Rep 227, 248 (Comm’n on Jud Conduct June 21, 2002) *aff’d* 100 NY2d 56 (2003).

Here, in an eight-month period, Respondent was suspended twice from the practice of law for a total of 24 months for neglecting numerous client cases and a lack of candor – a suspension he is currently serving. First, on April 14, 2021, the Appellate Division, Second Department suspended Respondent for six months as reciprocal discipline regarding a matter in the Connecticut District Court. *Matter of Gonzalez*, 194 AD3d 152 (2d Dept 2021). The Second Department found that Respondent failed to file

responsive papers on behalf of his client and caused his case to be dismissed, failed to promptly respond to his client's numerous inquiries, and failed to provide information about developments in his case, for which Respondent was censured publicly by the Connecticut District Court. The Second Department concluded that a six-month suspension was warranted, citing the misconduct underlying the Connecticut discipline, Respondent's failure to timely inform the court of the Connecticut discipline, and Respondent's prior disciplinary history – consisting of three admonitions for similar misconduct. *Id.* at 154.

Eight months later, on December 8, 2021, the Appellate Division, Second Department, suspended Respondent from the practice of law for another 18 months, to run consecutive to the above suspension. *Matter of Gonzalez*, 201 AD3d 122 (2d Dept 2021). The Second Department found that in five matters between 2013 and 2019, Respondent neglected client's cases and failed to provide competent representation by, *inter alia*, failing to inform clients and/or recognize that clients' claims were barred by the statute of limitations, frivolously pursuing claims that he knew were time-barred, and failing to appear on behalf of a client in an eviction proceeding.

The Second Department further found that Respondent lacked candor in proceedings before the Grievance Committee. First, in completing background questionnaires in connection with six complaints of professional misconduct received in 2018 and 2019, Respondent was asked, "Have you ever had a complaint of attorney misconduct filed against you which resulted in a disposition other than a dismissal, by any agency or body *other* than the Grievance Committee for the 9th Judicial District?"

Matter of Gonzalez, 201 AD3d at 126-27. Respondent answered no – “one or more times” – despite having received a public censure from the Connecticut District Court in 2017 and a Letter of Admonition from the Departmental Disciplinary Committee in 2016. *Id.* Then, when questioned under oath at “one or more examinations” before the Grievance Committee, Respondent represented that he had been the subject of attorney disciplinary investigations conducted by the Connecticut District Court and the Departmental Disciplinary Committee but “denied that he had been the subject of any professional discipline in either of those jurisdictions.” *Id.* at 127. When given the opportunity to correct his sworn testimony post-appearance, Respondent failed to do so. *Id.*

Consistent with *Tamsen* and its progeny, the habitual and uncorrected pattern of neglecting client matters, aggravated by a lack of candor before the Grievance Committee, diminishes public confidence in the integrity of Respondent individually and the judiciary as a whole. Put simply, an attorney who is prohibited from practicing law should not be permitted to serve as a judge – a position that requires administering justice and maintain public confidence and trust – while suspended.

That the Appellate Division suspended Respondent from the practice of law for 24 months reflects the seriousness of Respondent’s misconduct. While a suspension as an attorney does not *de jure* compel removal from the bench in the case of a Village Justice, it creates a strong presumption that the suspended attorney is unfit to be a judge. First and foremost, removal is warranted to preserve the public’s confidence in the judiciary. To allow Respondent to remain on the bench and render decisions while he himself has

been deemed unfit to practice as a lawyer would create “[a]n anomalous result ... [that] would reflect poorly on the judiciary and invite scorn and disrespect for our rule of law.” *Matter of Fitzgerald*, 100 NY2d at 54 (internal quotes omitted). Simply stated, allowing a judge to remain on the bench and render decisions – while suspended from the practice of law – would foster distrust and a lack of confidence in Respondent’s court and the entire judicial process.

Moreover, since suspending an attorney is intended in part to protect the public from unfit lawyers (Rules for Attorney Disciplinary Matters [22 NYCRR § 1240.8[b][2]), it follows that an attorney suspended from the practice of law cannot continue to serve as a judge. This is especially true where, as here, the Appellate Division concluded that Respondent lacked candor in the Grievance Committee proceedings. Respondent failed entirely to disclose two prior disciplines to the Grievance Committee on multiple background questionnaires, despite having been publicly censured by the Connecticut District Court and admonished by the Departmental Disciplinary Committee only two to three years prior. He then denied under oath, more than once, that he had been disciplined in either jurisdiction, and he claimed to have been the subject of only a disciplinary investigation. Although given the opportunity to correct this misrepresentation, Respondent chose to do otherwise. Such acts of dishonesty and deception are “antithetical to the role of a judge who is sworn to uphold the law and seek the truth” (*Matter of Collazo*, 91 NY2d at 255 [citation omitted]), and severely undermine Respondent’s fitness to continue as a judge.

Matter of Collazo is highly instructive. There, both the Commission and the Court of Appeals found that although the judge's underlying misconduct – a “ribald note and indelicate suggestion” – was not itself sufficient to justify removal, removal was warranted because of the judge's “pattern of evasive, deceitful and outright untruthful behavior, evidencing a lack of fitness to hold judicial office.” *Id.* Judge Collazo failed to disclose that he was under investigation by the Commission in a questionnaire from the Governor's Judicial Screening Committee and lied to legislative staffers when asked directly whether he was the subject of any complaints before the Commission. *Id.* at 254-55. That untruthful behavior is remarkably similar to Respondent's deceitful behavior here. As in *Collazo*, removal is the appropriate sanction.

Matter of DiStefano, 2005 Ann Rep at 148-49, and *Matter of Barlaam*, 1995 Ann Rep 105, 106 (Comm'n on Jud Conduct July 27, 1994), are also pertinent. In each case, the judge was censured by the Commission after being censured as an attorney for client neglect and making misleading statements to the Grievance Committee. *DiStefano*, 2005 Ann Rep at 148-49; *Barlaam*, 1995 Ann Rep at 106. Here, however, rather than censure, the Grievance Committee suspended Respondent for two years. This is a critical distinction. An attorney who is censured continues to practice law, and a judge who is censured continues to serve on the bench. But an attorney who is prohibited from entering the courtroom as an advocate should not be permitted to preside in that courtroom as the adjudicator. Any other result would be absurd, particularly where, as here unlike in *DiStefano*, Respondent's falsehoods were made repeatedly under oath. As the Appellate Division found, “during sworn testimony given at one or more

examinations under oath,” Respondent acknowledged that he had been investigated by the First Department and the Connecticut District Court but denied that he had been disciplined. *Matter of Gonzalez*, 201 AD3d at 127. And “when given an opportunity to correct his sworn testimony, post-appearance, after one such examination” Respondent still failed to be truthful. *Id.*

To be sure, in *Matter of Kelso*, 61 NY2d 82 (1984), the Commission determined to remove a part-time town justice who had been suspended from the practice of law for one year, yet the Court of Appeals rejected the determined sanction and instead censured the judge. Critically though, unlike the facts of this case, the judge in *Kelso* had not been suspended twice and admonished thrice, nor had he given false sworn testimony.

Respondent’s attempt to mitigate his conduct by suggesting that he has never been the subject of any “allegations of any misconduct on the bench,” (Respondent’s Opposition to Motion for Summary Determination, at 1) is without merit. He was elected as village justice on April 5, 2021, and as of December 17, 2021, pursuant to an Administrative Order, he has been confined to chambers and all matters on his docket have been reassigned to other judges. That there have been no allegations of misconduct against him during his eight months on the bench is hardly mitigating.

Similarly, Respondent misses the point entirely in arguing that he is not required to be an admitted attorney to hold the position of Elmsford Village Justice (Respondent’s Opposition to Motion for Summary Determination, at 3). It is the obligation of every judge, lawyer or non-lawyer, to adhere to higher standards of conduct than the public at large. *See Matter of Mason*, 100 NY2d at 60; *Matter of Tamsen*, 100 NY2d at 21; *see*

also Matter of Ayres, 30 NY3d 59, 63 (2017). Respondent's misconduct as an attorney also violates the ethical rules for judge, who are required to foster public confidence in the courts and the administration of justice to avoid even the appearance of impropriety. *See* Rules 100.1, 100.2(A). As discussed above, the public could have no confidence in a judge who has been deemed unfit to serve as an attorney, nor in a judicial system that permits a suspended attorney to hold judicial office.

For the foregoing reasons, Respondent should be removed from office to protect the public and maintain the integrity of the judiciary.

CONCLUSION

Counsel to the Commission respectfully requests that the Commission issue a determination recommending Respondent's removal from office.

Dated: February 18, 2021
New York, New York

Respectfully submitted,

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