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FOR LITIGATION

October 17, 2019

Hon. John P. Asiello
Clerk of the Court of Appeals
Court of Appeals Hall
20 Eagle Street
Albany, New York 12207

Re: Matter of Hon. Sylvia G. Ash

Dear Mr. Asiello:

Thank you for your letter of October 11, 2019, inviting comment by the Commission on Judicial Conduct regarding the Court's suspension of Sylvia G. Ash from her position as a Justice of the Supreme Court, Kings County, and whether such suspension should continue.

Pursuant to Article 6, Section 22, subdivision f, of the New York State Constitution, and Section 44, subdivision 8, of the Judiciary Law, the Court has authority to suspend a judge or justice from office when he or she is charged with a crime punishable as a felony under the laws of this state, or an offense involving moral turpitude. The Commission respectfully submits that there is cause to suspend Justice Ash on both felony and moral turpitude grounds.

On October 11, 2019, Justice Ash was arrested pursuant to a complaint dated October 4, 2019, brought by the United States Attorney for the Southern District of New York. The complaint alleges one count of Conspiracy to Obstruct Justice and two counts of Obstruction of Justice, in violation of Title 18 of the United States Code, Sections 371, 1512(c), 1519 and 2. The counts charged

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against her are federal felonies that, if established, would carry penalties including incarceration for up to 20 years.

The crimes alleged against Justice Ash involve her activities in association with the Municipal Credit Union (MCU), an entity on whose board she previously served as a member and as chair. Justice Ash *inter alia* allegedly (A) agreed to sign a false and misleading document in an attempt to impede, obstruct and influence a federal investigation into the former chief executive officer of the MCU; (B) agreed to corruptly alter, destroy, mutilate and conceal a record sought from her by a federal grand jury; (C) signed a false and misleading memorandum germane to the federal investigation; (D) concealed and deleted text messages and “wiped” a mobile telephone that had been sought by grand jury subpoena; and (E) made false and misleading statements to law enforcement officers in connection with the federal investigation.

Justice Ash’s alleged violation of 18 USC §1512(c) bears “essential similarity” to the New York felony of tampering with physical evidence, in violation of Penal Law §215.40(2). *In re Coren*, 76 AD3d 285, 287 (1st Dept 2010). Her alleged violation of 18 USC §1519 is also “essentially similar” to the New York felony of tampering with physical evidence, in violation of Penal Law §215.40. *In re Winchester*, 169 AD3d 195, 197 (2nd Dept 2019).

In addition to being analogous to certain felonies under New York law, the federal crimes charged against Justice Ash could reasonably be characterized as involving moral turpitude. While the term “moral turpitude” does not appear to be defined in statute, Judiciary Law §90(4)(d) defines a “serious crime” as one involving *inter alia* false swearing, misrepresentation and fraud. The United States Supreme Court held in *Jordan v De George*, 341 US 223 (1951), that crimes involving moral turpitude include fraudulent conduct. This Court underscored the point in *Schaubman v Blum*, 49 NY2d 375 (1980), and *Matter of Pell v Board of Education*, 34 NY2d 222 (1974). Inasmuch as the federal complaint against her alleges such fraudulent conduct as deliberate falsehoods and evidence tampering, and fraudulent conduct has been held to constitute moral turpitude, Justice Ash is eligible for suspension from judicial office by this Court. Const, Art 6, §22(f).

The Commission renders no comment on the merits of the criminal charges against Justice Ash and recognizes that she, as any defendant, is entitled to the presumption of innocence with respect to those charges. At the same time, the

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Commission believes that public confidence in the integrity of the judiciary, the courts and the administration of justice would be undermined were Justice Ash to exercise the powers of judicial office in one court while contemporaneously defending against serious charges pending against her in another.

The Commission therefore recommends that, consistent with the Court's precedents, and as authorized by the Constitution and the Judiciary Law, Justice Ash be suspended from exercising the powers of judicial office until the criminal charges against her are resolved.

The Commission takes no position on whether such suspension should be with or without pay. The Commission notes that, while the filing of felony charges against a judge or justice in this state is rare, it has been this Court's general practice in such cases to suspend the defendant from judicial office, with pay, while the charges are pending. *See, Matter of Winchester*, 29 NY3d 1044 (2017) (judge charged in SDNY on false-statement-to-lender and obstruction charges); *Matter of Cicale*, 31 NY3d 996 (2018) (judge charged with burglary); *Matter of Barto*, 23 NY3d 1032 (2014) (judge charged *inter alia* with larceny and falsifying business records); *Matter of Apple*, 19 NY3d 1045 (2012) (judge charged with felony DWI); *Matter of Anderson*, 11 NY3d 894 (2008) (judge charged with felony campaign-finance charges). Upon a guilty plea or conviction, the Court has continued the suspension, without pay, until such time as the judge was removed from office as a matter of law. *See, Matter of Winchester*, 29 NY3d 1121 (2017); *Matter of Cicale*, _ NY3d _ (2019), Slip Op 07005, (Sept 27, 2019).

Very truly yours,



Robert H. Tembeckjian

cc: Judges of the Court of Appeals (via Mr. Asiello)
Hon. Lawrence Marks, Chief Administrative Judge
Hon. Lawrence Knipel, Administrative Judge, 2nd Judicial District
Roger Archibald, Esq., Attorney for Justice Ash
Eli Marks, Esq., Assistant US Attorney