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December 21, 2021

VIA UPS Overnight Delivery: 1ZV57A910199269487

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 December 15, 2021, inviting comment by the Commission on Judicial Conduct as to whether the Court should continue its suspension of Sylvia G. Ash as a Justice of the Supreme Court, Kings County, and whether such suspension should be with or without pay.

By order dated October 11, 2019, pursuant to Article VI, Section 22(e), of the Constitution and Section 44(8) of the Judiciary Law, this Court suspended Justice Ash from judicial office, with pay, following her indictment on federal criminal charges. *Matter of Ash*, 34 NY3d 941 (2019). The suspension was continued by Order dated October 29, 2019. *Matter of Ash*, 34 NY3d 970 (2019).

On December 13, 2021, Justice Ash was convicted after trial by jury in the United States District Court for the Southern District of New York on one count each of conspiracy to obstruct justice, obstruction of justice and

making false statements to a federal agent. Among other things, she did not produce materials under her custody or control that were responsive to a federal grand jury subpoena directed to her, she deleted emails and data from her cellular phone and two other electronic devices that were responsive to two federal grand jury subpoenas directed to her, and she made multiple false statements to a federal agent regarding her financial transactions with the Municipal Credit Union during and after her service on its board of directors.¹

While the filing of criminal 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 judge from judicial office, with pay, while the charges are pending and the defendant judge enjoys the presumption of innocence. *See Matter of Ash*, 34 NY3d 941 (2019) and 34 NY3d 970 (2019) (judge charged in SDNY *inter alia* with conspiracy, obstruction and false-statement-to federal-agent); *Matter of Winchester*, 29 NY3d 1044 (2017) (judge charged in SDNY with false-statement-to-lender and obstruction); *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 campaign-finance offenses).

However, upon a guilty plea or conviction, whereupon the presumption of innocence no longer applies, the Court has continued the suspension, without pay, until such time as the judge resigned or was removed from office as a matter of law. *See, Matter of Winchester*, 29 NY3d 1121 (2017); *Matter of Cicale*, 34 NY3d 940 (2019), and *Matter of Seedorf*, 34 NY3d 1023 (2019).

The Commission believes that public confidence in the integrity of the judiciary, the courts and the administration of justice would be undermined were a judge to exercise the powers of judicial office and/or continue to receive a publicly-funded salary after conviction on serious charges, such as the verdict returned against Justice Ash.

¹ <https://cjc.ny.gov/Miscellany/Ash.2021-12-13.USAO-SDNY.PressRelease.pdf>

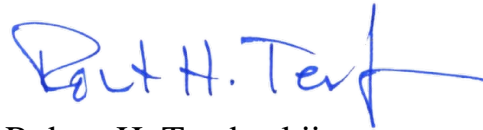
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In view of the foregoing, the Commission respectfully recommends that Justice Ash's suspension from judicial office be continued and that it be without pay.

Very truly yours,



Robert H. Tembeckjian
Administrator & Counsel

cc: Judges of the Court of Appeals (via Mr. Asiello)
Hon. Lawrence K. Marks, Chief Administrative Judge
Eileen D. Millett, Esq., Counsel, Office of Court Administration
Hon. Lawrence Knipel, Administrative Judge, 2nd Judicial District
Hon. Damian Williams, US Attorney, SDNY
Eli Mark, Esq., Assistant US Attorney, SDNY
Carrie M. Cohen, Esq., Attorney for Justice Ash
Roger Archibald, Esq.