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October 22, 2019

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RECEIVED

OCT 23 2019

Re: *Matter of Hon. Paul H. Senzer*

NYS COMMISSION ON
JUDICIAL CONDUCT NYC

Dear Mr. Asiello:

I am in receipt of your correspondence of October 16, 2019 inviting Judge Senzer to provide in writing his reasons or arguments why he should not be suspended and whether any such suspension should be with or without pay.

Initially, it is our position that Judge Senzer should not be suspended pending a full review by this Court of the Commission on Judicial Conduct's Determination, which Judge Senzer will request pursuant to Judiciary Law § 44(7).

This matter- one of first impression- involves a retained attorney's regrettable use of foul language in confidential email years ago with a single private client over a four month period in the heat of litigation. No part of this speech was intended for public dissemination, occurred in the public sphere or involved the attorney functioning as a judge- on or off the bench. Given the unique set of facts and attendant constitutional / policy implications expressly permitting part-time judges in New York to engage in the practice of law, the Court is respectfully asked to forego suspension at this time, pending its full review, especially in light of the grave sanction recommended.

There are several factors relevant to this matter which weigh against a suspension pending such review. Initially, the allegations made against Judge Senzer strictly relate to private email communications between Judge Senzer, while acting in his role as a private attorney, and a husband and wife client of his private law practice. Those communications were not publicly made and were, at all times, written in the context of emphasis, counsel and advice to the clients to express the difficulties they would be facing if they chose to maintain their legal action.

Although the determination classified Judge Senzer's communications as a pattern of behavior, the record was devoid of any evidence of Judge Senzer having ever engaged in similar

behavior to that which is at issue in these proceedings. Far from a pattern of behavior, Judge Senzer has not had another single complaint relating to the use of vulgar, profane or sexist language throughout the entirety of his twenty-five (25) years of service as a judge and his thirty-seven (37) years as an attorney since, as he testified, such language is not a part of his ordinary lexicon.

It should further be noted that the witnesses who testified on Judge Senzer's behalf at the hearing, which included both a female Judge and a female Assistant District Attorney, were consistent in their assertions that throughout the years they worked with Judge Senzer, they had never heard him make a disparaging remark about anyone. Judge Senzer's limited use of vulgar language in a handful of email communications with his client was an anomaly and was not consistent with the manner in which he ordinarily comports himself.

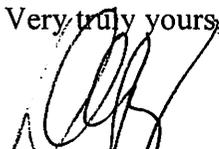
Allowing petitioner to remain active in the part-time elected role he has occupied as a village justice for 25 years, it is submitted, would threaten no immediate harm to the public, the judicial process or the integrity of the bench. On the contrary, forbearance on this record effectively signals all stakeholders, including the electorate, that proper sanction takes practical effect only after this Honorable Court has had a full opportunity to conduct its deliberate plenary review.

Accordingly, it is submitted that Judge Senzer should be permitted to continue to act as a judge pending this Court's review of the removal determination.

However, should this Court, in its discretion, decline to grant such request, it is submitted that any suspension imposed should be with pay. As pointed out by the Commission in its October 22, 2019 correspondence, it has been this Court's consistent practice to enable judges who have been suspended pending this Court's review of a removal decision to continue to receive pay associated with their judicial role. There are no aggravating circumstances present in this matter which would warrant derivation from that practice.

Thank you for your consideration of the within.

Very truly yours,



DAVID H. BESSO

DHB:ap
Enclosures