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December 23, 2025

By Mail and Email: [REDACTED]

Heather Davis, Esq.
Chief Clerk and Legal Counsel
New York State Court of Appeals
20 Eagle Street
Albany, New York 12207-1095

Re: Matter of Hon. David M. Miller, a Justice of the Wolcott Village Court

Dear Ms. Davis:

Please accept this letter in response to your invitation for comment on whether the suspension of Wolcott Village Court Justice David M. Miller (Wayne County) should be continued, and if so whether such suspension should be with or without pay.

The authority of the Court to suspend a judge is limited to three circumstances: where the judge is charged with a felony, where the judge is charged with any other crime involving moral turpitude, or where the judge is the subject of a pending removal or retirement determination filed by the Commission. Const Art VI, §§22(e), (f); Jud L §§44(8)(a), (b), (c).

Judge Miller's arrest on October 31, 2025, resulted in his being charged with the class D felony of Grand Larceny in the Third Degree, pursuant to New York Penal Law § 155.35(1), for the theft of approximately \$5,334 worth of Quick Draw lottery tickets at the Wolcott Elks Lodge. The Court thereafter suspended him from exercising the powers of judicial office, with pay, pursuant to the constitutional and statutory provisions noted above.

Heather Davis, Esq.

December 23, 2025

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Judge Miller was arraigned at the Wayne County Jail and released on October 31, 2025, pending further court proceedings.

The Commission renders no comment on the merits of the felony charge against Judge Miller and recognizes that he, like any defendant, is entitled to the presumption of innocence with respect to that charge. At the same time, the Commission believes that public confidence in the integrity of the judiciary, the courts and the administration of justice would be undermined were Judge Miller to exercise the powers of judicial office in one court while contemporaneously defending against a serious criminal charge pending against him in another.

The Commission respectfully recommends that the Court continue Judge Miller's suspension, with pay, until the pending felony charge is resolved. Should he be convicted of a felony, the Court should promptly suspend him without pay, pending either his resignation or his removal from judicial office upon the conviction becoming final. Const Art VI, §22(f); Jud L §44(8)(b). If the felony charge is disposed without Judge Miller being convicted of a felony, I would be constrained to submit that his suspension must be lifted, inasmuch as none of the constitutional and statutory predicates for suspension would exist.¹

Very truly yours,



Robert H. Tembeckjian
Administrator and Counsel

Enclosures

cc: Hon. David M. Miller (USPS & Email: [REDACTED])
Judges of the Court of Appeals (via Ms. Davis)
Joseph A. Zayas, Chief Administrative Judge

¹ It should be noted that, for judicial disciplinary purposes, the full circumstances of a judge's arrest would be subject to review, regardless of the manner in which the criminal charges are disposed. *See, e.g., Commission on Judicial Conduct v Rubenstein*, 23 NY3d 570 (2014).