

February 8, 2022

Attorney Grievance Committee
Third Judicial Department
286 Washington Avenue Extension, Suite 200
Albany, NY 12203

Dear Committee:

We write regarding the serious and sustained misconduct of Andrew M. Cuomo, attorney register number 1935477, a member of the New York Bar admitted in the Third Department.

Former New York Governor Cuomo's unlawful acts, many of which the New York State Attorney General described in detail in an August 3, 2021 report ("AG Report")¹ and which are further detailed in the Impeachment Investigation Report to the New York State Assembly Judiciary Committee ("Assembly Report")², are clear violations of the NY Rules of Professional Conduct (22 N.Y.C.R.R. Part 1200), in particular, rule 8.4(H) ("A lawyer or law firm shall not...engage in any other conduct that adversely reflects on the lawyer's fitness as a lawyer").

Given the sustained and brazen nature of his offenses, we believe it's clear that Mr. Cuomo is not fit to continue serving as an attorney in the state of New York. We, therefore, request that this committee immediately initiate and pursue appropriate disciplinary proceedings against Mr. Cuomo.

The AG Report and the Assembly Report reveal Mr. Cuomo committed sustained and gross misconduct unbefitting of a member of the Bar

The AG Report, developed through rigorous independent investigation and issued by the office of the chief law enforcement and legal officer of the state, concluded that Mr. Cuomo himself "engaged in conduct constituting sexual harassment under federal and New York State law," and that the Executive Chamber, which he managed and oversaw, responded to allegations of harassment in an "improper and inadequate" manner, also violating legal rules and ethical norms.³ The report identified four primary conclusions:

- 1) The Governor Engaged in Conduct that Constituted Sexual Harassment Under Federal and State Law

¹ Report Of Investigation Into Allegations Of Sexual Harassment By Governor Andrew M. Cuomo, State Of New York Office Of The Attorney General, August 3, 2021 (hereinafter "AG Report") available at https://ag.ny.gov/sites/default/files/2021.08.03_nyag_-_investigative_report.pdf

² Impeachment Investigation Report to the New York State Assembly Judiciary Committee, November 22, 2021 (hereinafter "Assembly Report") available at <https://nyassembly.gov/Press/?sec=story&story=99809>

³ *Id.* at 1.

- 2) The Executive Chamber's Failure to Report and Investigate Allegations of Sexual Harassment Violated Their Internal Policies
- 3) The Response to Lindsey Boylan's Allegation of Sexual Harassment Constituted Unlawful Retaliation
- 4) The Culture and Environment of the Executive Chamber Contributed to the Conditions that Led to Sexual Harassment and the Problematic Responses to Allegations of Harassment⁴

The Assembly Report confirmed the AG Report's findings and made additional conclusions:

- 1) Former Governor Cuomo engaged in multiple instances of sexual harassment, including by creating a hostile work environment and engaging in sexual misconduct;
- 2) The former governor utilized state resources and property, including work by Executive Chamber staff, to write, publish and promote his book – a project which guaranteed at least \$5.2 million in personal profit; and at the same time;
- 3) The former governor was not fully transparent regarding the number of nursing home residents who died as a result of COVID-19.⁵

We also note that a criminal complaint has been filed against Mr. Cuomo in this jurisdiction for sexual assault, further demonstrating the gravity of Mr. Cuomo's misconduct.⁶ Although the Albany District Attorney requested and was granted a dismissal of the complaint, he noted that he found the complainant to be credible.⁷

The AG Report and Assembly Report reveal a range of gross and serial misconduct on the part of Mr. Cuomo, including groping and forced touching of at least one subordinate staff, repeated verbal sexual harassment of several subordinate staff, and various violations of state ethics and employment law in his management and supervision of the Executive Chamber of the State of New York. Indeed, several aspects of his misconduct have subjected Mr. Cuomo to criminal and civil liability.⁸

⁴ *Id.* at 165.

⁵ "Assembly Judiciary Committee Releases Investigation Report," Press Release, Assembly Speaker Carl Heastie, Nov. 22, 2021, <https://nyassembly.gov/Press/?sec=story&story=99809>

⁶ Albany City Court Case no. CR-02517-21; *see also* CNN, Complaint alleging a sex crime has been filed against former NY Gov. Andrew Cuomo, Oct. 29, 2021 available at <https://www.cnn.com/2021/10/28/politics/andrew-cuomo-charges/index.html>

⁷ Statement from Albany County District Attorney David Soares http://albanycountyda.com/Media/News/22-01-04/Statement_from_DA_David_Soares.aspx

⁸ City & State NY, Cuomo's outstanding civil and criminal consequences, <https://www.cityandstatenyc.com/politics/2021/08/cuomos-outstanding-civil-and-criminal-consequences/184432>; ABC News, Cuomo accuser Lindsey Boylan to file lawsuit against embattled governor: Lawyer <https://abcnews.go.com/US/cuomo-accuser-lindsey-boylan-file-lawsuit-embattled-governor/story?id=79288632>

This Committee has the authority and responsibility to pursue disciplinary proceedings against Mr. Cuomo for his misconduct as Governor

Most recently, the First Department pursued and secured disciplinary penalties against the former Attorney General of New York, Eric Schneiderman, for wholly *personal* sexual misconduct.⁹ Here, the most egregious aspects of Mr. Cuomo's misconduct as laid out in the AG report and Assembly Report were on-the-job and managerial-related misconduct that harmed and injured state employees under his supervision, direction, and control, which presents this Committee with even clearer jurisdiction and responsibility.

Lawyers such as Mr. Cuomo, who become publicly elected officials, must not be immune from disciplinary proceedings merely because they no longer represent clients or engage in the formal practice of law on a daily basis. The New York Rules of professional conduct explicitly states that holding public office carries its own legal responsibilities going beyond those of other citizens.¹⁰ Moreover, the role of Governor is, by its nature, a quasi-legal position, with ultimate responsibilities over legal, policy, staffing, and compliance matters. Indeed, on his formal attorney registration, Mr. Cuomo listed (and continues to list even months after his departure) his former business address as the Office of the Governor State Capitol in Albany, demonstrating that his employment as Governor was also his professional legal designation. This screenshot, accessed January 24, 2022, shows as such:

Attorney Detail Report as of 01/24/2022	
Registration Number:	1935477
Name:	ANDREW M. CUOMO
Business Name:	OFFICE OF THE GOVERNOR STATE CAPITOL
Business Address:	110 STATE ST ALBANY 12207-2027
Business Phone:	(518) 474-7516
Email:	
Date Admitted:	06/22/1984
Appellate Division Department of Admission:	3rd
Law School:	ALBANY
Registration Status:	Attorney - Delinquent
Next Registration:	Dec 2022

⁹ Matter of Schneiderman 2021 NY Slip Op 02497 Apr. 27, 2021

¹⁰ New York Rules of Prof'l Conduct R. 8.4 Comment 5 ("Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.")

Moreover, Mr. Cuomo's registration has been declared in *delinquent* status; while clearly minor compared to his other misconduct, delinquency in registration is something by itself that subjects attorneys to discipline.¹¹

Disciplinary committees have also investigated, and courts have disciplined attorneys, for non-legal practice activities, including even private misbehavior.¹² This again includes the First Department's recent discipline of Mr. Schneiderman for sexual abuse in personal relationships, but also a range of other forms of harassment and discrimination.¹³

Here, Mr. Cuomo's misconduct, including his sexual harassment of multiple women, was inextricably bound up in his status as the Chief Executive for the state of New York and in his capacity as the most senior legal and policy manager in the state.

Mr. Cuomo has admitted to conduct that constitutes sexual harassment under New York Law

Under Title VII of the Civil Rights Act of 1964, "the kinds of workplace conduct that may be actionable ... include [u]nwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature," that is sufficiently severe or pervasive to "unreasonably interfer[e] with an individual's work performance or creat[e] an intimidating, hostile, or offensive working environment."¹⁴ In addition, "harassment does not have to be of a sexual nature... and can include offensive remarks about a person's sex."¹⁵

Since 2019, under the New York State Human Rights Law, conduct need not be "severe or pervasive" to be sexual harassment, but rather conduct is sexual harassment if it "subjects an individual to inferior terms, conditions or privileges of employment" because of the person's sex.

¹⁶

Mr. Cuomo has himself *admitted* to many of the allegations against him made by a state trooper on his police detail. In response to her allegation that "he once stood behind her and ran his

¹¹ *Matter of Attorneys Who Are in Violation of Judiciary Law Section 468-a 2020*, NY Slip Op 01972 (2020) "failure to register or re-register, and pay the biennial registration fee constitutes professional misconduct warranting discipline (citing *Matter of Morgado*, 159 AD3d 50 [1st Dept 2018]).

¹² New York Legal Ethics Reporter, Lawyer's Private Misconduct Can Lead to Suspension, <http://www.newyorklegalethics.com/lawyers-private-misconduct-can-lead-to-suspension/>

¹³ *See, e.g. In re Isaac*, 76 A.D.3d 48, 52 (2010) (suspending attorney's bar license for six months following allegations that he sexually harassed both a client and his secretary); *Matter of Shin*, No. 2021-01088, 2021 WL 3672786 (N.Y. App. Div. Aug. 19, 2021) (suspending attorney's bar license for three months following allegations that she used a fake email address to falsely complain about a coworker's job performance and to falsely accuse the coworker's husband of sexual harassment).

¹⁴ *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 65, 106 S. Ct. 2399, 2404, 91 L. Ed. 2d 49 (1986)

¹⁵ United States Equal Employment Opportunity Commission, "Sexual Harassment" available at <https://www.eeoc.gov/sexual-harassment>

¹⁶ New York State Executive Law Section 296(1)(h); see also the AG Report at page 134; see also New York State Division of Human Rights "Sexual Harassment" available at <https://dhr.ny.gov/sites/default/files/pdf/sexual-harassment.pdf>;

finger from the top of her neck down her spine to the middle of her back, saying ‘Hey, you,’”¹⁷ Mr. Cuomo said, “if she said I did it, I believe her...I want to personally apologize to her and her family.” In response to her allegation that he “once asked her why she wanted to get married, saying that ‘it always ends in divorce, and you lose money, and your sex drive goes down,’”¹⁸ Mr. Cuomo admitted to making comments about “the negative consequences of married life.”¹⁹

In February 2020, following the publication of allegations by Charlotte Bennett, a former aide, that Mr. Cuomo had “asked her questions about her sex life, whether she was monogamous in her relationships and if she had ever had sex with older men,”²⁰ Mr. Cuomo released a statement saying, “I now understand that my interactions may have been insensitive or too personal and that some of my comments, given my position, made others feel in ways I never intended. I acknowledge some of the things I have said have been misinterpreted as an unwanted flirtation. To the extent anyone felt that way, I am truly sorry about that.”²¹

In general, while alleging his own personal subjective conclusion that he never touched anyone “*inappropriately*” nor made “*inappropriate*” sexual advances, Mr. Cuomo has made the fact that he has a habit of kissing and putting his hands on people a key component of his public defense, blaming any injury he has caused on “generational and cultural perspectives” that he admits not fully appreciating.²² Whether such an explanation is credible for someone who previously declared “There should be a zero tolerance policy when it comes to sexual harassment & must send a clear message that this behavior is not tolerated”²³ and celebrated his signing of “the strongest government sexual harassment policy in the United States”²⁴ is immaterial, as under both the federal and state standards, a finding of sexual harassment does not rely on his subjective intent.²⁵ Mr. Cuomo violated the law and committed unlawful workplace sexual

¹⁷ New York Times, Cuomo harassed a state trooper in his protective detail, the report said, <https://www.nytimes.com/2021/08/03/nyregion/cuomo-state-trooper.html>

¹⁸ New York Times, Cuomo harassed a state trooper in his protective detail, the report said, <https://www.nytimes.com/2021/08/03/nyregion/cuomo-state-trooper.html>

¹⁹ New York Times, Read the full transcript of Gov. Andrew Cuomo’s resignation speech, <https://www.nytimes.com/2021/08/10/nyregion/cuomo-resignation-speech-transcript.html>

²⁰ New York Times, Cuomo Is Accused of Sexual Harassment by a 2nd Former Aide, <https://www.nytimes.com/2021/02/27/nyregion/cuomo-charlotte-bennett-sexual-harassment.html>

²¹ AG Report at p 113

²² CBS News, Cuomo says he “never touched anyone inappropriately,” Biden calls on him to resign, <https://www.cbsnews.com/live-updates/andrew-cuomo-sexual-harassment-probe/>

²³ Archive: Governor Andrew Cuomo, <https://twitter.com/NYGovCuomo/status/335434417193508864?s=20>

²⁴ Politico, Foes assail Cuomo’s sexual harassment measures, <https://www.politico.com/states/new-york/albany/story/2018/06/04/foes-assail-cuomos-sexual-harassment-measures-447745>

²⁵ See Harris v. Forklift Systems, Inc., 114 S.Ct. 367, 368 (U.S. 1993) (“The applicable standard, here reaffirmed, is stated in Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57, 106 S.Ct. 2399, 91 L.Ed.2d 49: Title VII is violated when the workplace is permeated with discriminatory behavior that is sufficiently severe or pervasive to create a discriminatorily hostile or abusive working environment, *id.*, at 64, 67, 106 S.Ct., at 2404, 2405. This standard requires an objectively hostile or abusive environment—one that a reasonable person would find hostile or abusive—as well as the victim’s subjective perception that the environment is abusive.”; see also 29 C.F.R. § 1604.11 (“verbal or physical conduct of a sexual nature constitute[s] sexual harassment when... such conduct has the purpose or effect of... creating an

harassment when he - by his own admission - touched and kissed subordinates and interrogated them about their personal lives in ways that made them feel threatened and abused.

Mr. Cuomo's offenses violate New York's Rules of Professional Misconduct

This Committee should take formal notice of the AG report and Assembly Report that both concluded Mr. Cuomo violated state law and ethical rules through a range of serial misconduct. Disciplinary committees across the state often rely on the findings of other investigatory bodies, including Inspectors General, Prosecutors, and certainly the Attorney General, to pursue disciplinary actions against individual attorneys.²⁶

The wide range of Mr. Cuomo's unlawful behavior under state and federal law spelled out in the AG report and Assembly Report (whether his direct sexual harassment of staff or his failures to abide by employment law and state government rules in addressing or responding to allegations of harassment) is the type of clear and gross misconduct that rises to a standalone violation of Rule 8.4(H).

While New York Rules of Professional Conduct do not as yet explicitly include sexual harassment as a delineated offense in Rule 8.4(h),²⁷ other states' rules of professional conduct and the Equal Opportunity Commission deem sexual harassment a form of sex discrimination.²⁸ This Committee should see the persistent and overwhelming pattern of sexual harassment against women by Mr. Cuomo as a form of discrimination on the basis of sex, a delineated offense under Rule 8.4(g).

Mr. Cuomo has likely engaged in a range of other unlawful and unethical misconduct

intimidating, hostile, or offensive working environment." (emphasis added); see also *supra* at footnotes 13-15 and accompanying text.

²⁶ American Bar Association, Rule 11: Model Rules for Lawyer Disciplinary Enforcement, https://www.americanbar.org/groups/professional_responsibility/resources/lawyer_ethics_regulation/model_rules_for_lawyer_disciplinary_enforcement/rule_11/: ("The disciplinary counsel shall evaluate all information coming to his or her attention by complaint or from other sources alleging lawyer misconduct or incapacity.").

²⁷ New York City Bar Association Professional Responsibility Committee "recommends that the text of the NY Rule be modified to closely resemble the ABA Rule on the basis that doing so will strengthen ethics protections for protected classes and advance the goal of eliminating harassment and discrimination in the legal profession." Proposed Amendment, Proposed Amendment to New York Rule of Professional Conduct 8.4(g) Intended to More Effectively Guard Against Harassment & Discrimination in the Legal Profession

<https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/new-york-rule-84g-harassment-and-discrimination-proposed-amendment>

²⁸ The Equal Employment Opportunity Commission states that sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act.

<https://www.eeoc.gov/fact-sheet/facts-about-sexual-harassment>

The New York Public Officers Law makes it unlawful for any “officer or employee of a state agency, member of the legislature or legislative employee” to “use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others.”

²⁹ The Assembly Report and several other sources have described extensive conduct that constitutes violations of this provision. The New York State Joint Commission on Public Ethics has previously concluded that a public officers’ use of their position to commit sexual harassment can constitute a violation of Public Officers Law.³⁰

First, Mr. Cuomo gave family members and other influential individuals special access to coronavirus testing in the early days of the pandemic when testing was scarce, and most New Yorkers were not able to obtain testing.³¹ Moreover, these tests appear to have been administered not by the rank-and-file nurses who otherwise tested members of the public, but by high-level officials in the New York State Department of Health. It appears that these officials were directed to divert significant time from their work tracking the COVID-19 and determining an appropriate response, in order to cater to the then-Governor’s family.³² Notably, Mr. Cuomo has not denied the use of high-level staff to test his family and friends.³³

Second, Mr. Cuomo is also currently under investigation by the New York State Attorney General’s office to determine whether he used state resources when he asked employees to edit and fact-check his memoir.³⁴ When initially seeking approval from the Joint Commission on Public Ethics, Mr. Cuomo stated that state employees would not work on writing the book, but it

²⁹ N.Y. Pub. Off. Law § 74.

³⁰Substantial Investigation Basis Report, In the Matter of an Investigation of Assemblymember Vito J. Lopez, State of New York Joint Commission on Public Ethics (“the Commission finds that Lopez used the powers and perks of his position as a member of the Assembly to engage in knowing, willful, and prolonged mistreatment of certain female members of his Assembly staff. Lopez engaged in a pervasive pattern of abuse of public office and resources, not for a personal financial gain, but to indulge his personal whims and desires. By this conduct, Lopez indisputably breached the public trust and thereby violated the Public Officers Law”), at page 2, available at <https://jcope.ny.gov/system/files/documents/2017/12/substantial-basis-investigation-reportvlopez.pdf>; See also Decision of State of New York Joint Commission on Public Ethics In the Matter of An Investigation of Former Senator Jeffrey Klein, Exhibit B to Verified Petition In the Matter of the Application of Jeffrey Klein, filed December 21, 2020, Index No. 907927-20 (“a superior’s inappropriate conduct with a subordinate carries potential consequences in matters of hiring, firing and promotion...the proposition that sexual misconduct directed at a government employee by a public officer, as a rule, cannot implicate the government decision-making process reflects an exceedingly narrow view of these processes”)

³¹ New York Times, Cuomo’s Family Is Said to Have Received Special Access to Virus Tests, <https://www.nytimes.com/2021/03/24/nyregion/cuomo-family-covid-testing.html?searchResultPosition=2>

³² See Albany Times Union, Top health officials told to prioritize COVID testing for Cuomo’s relatives, <https://www.timesunion.com/news/article/High-level-health-officials-were-tasked-with-16044748.php> (describing an incident in which Dr. Eleanor Adams, a top Health Department epidemiologist, traveled to Long Island to administer a test to then-Governor Cuomo’s brother).

³³ *Id.*

³⁴ New York Times, Cuomo Faces Inquiry Over Use of State Resources for Pandemic Book, <https://www.nytimes.com/2021/04/19/nyregion/andrew-cuomo-book-investigation.html?searchResultPosition=3>

was later disclosed that staffers were involved in a range of tasks related to the book.³⁵ Indeed, in recent days, that same ethics commission ordered Cuomo in a 12-1 vote to turn over millions of dollars in profits from his memoir, giving him 30 days to comply or face forfeiture measures from the state attorney general.³⁶

Third, Mr. Cuomo appears repeatedly to have misappropriated public resources in the course of sexually harassing state employees. On numerous occasions, Mr. Cuomo abused the power and resources granted to him by his official position as Governor to summon state workers into his proximity for no purpose other than to subject them to sexual harassment - it is not a perk of office to abuse state workers, nor to marshal state resources to do so. Specifically, the AG report describes two occasions on which the former Governor used the state's personnel processes and potentially even manipulated staffing policy in order to recruit women to his office after meeting them only briefly.³⁷ According to the report, Mr. Cuomo went on to harass both women repeatedly, including in an incident in which Mr. Cuomo summoned one staffer to his office "to search for car parts on eBay for him" and then stood uncomfortably close to her while she carried out his directive.³⁸ The AG Report further relates an incident in which a Cuomo staffer escorted witness Lindsay Boylan from a holiday party to his office in the Capitol for an unsolicited, one-on-one "tour" in which the Governor made what she understood to be a sexual innuendo regarding Bill Clinton and Monica Lewinsky.³⁹ Finally, the AG Report describes an email to Boylan in which Cuomo Aide Stephanie Benton relayed a message from the Governor that Ms. Boylan should "look up Lisa Shields," whom Mr. Cuomo had previously dated, continuing "You could be sisters. Except you're the better looking sister."⁴⁰

Both the AG Report and the Assembly Report describe the former Governor's repeated and willful misuse of state resources to administer priority health services to family members and friends, to obtain personal secretarial and editorial assistance for his non-Government pursuits, and to facilitate his sexual harassment of multiple public employees, all in violation of the Public Officers Law.

Conclusion

Mr. Cuomo's serial misconduct, which the New York State Attorney General and the New York State Assembly Judiciary Committee have concluded violated federal and state law, and which has subjected Mr. Cuomo to ongoing criminal and civil liability, are clear grounds for this

³⁵ *Id.*

³⁶ Cuomo Is Ordered to Forfeit Earnings From \$5.1 Million Book Deal, The New York Times, December 14, 2021 available at <https://www.nytimes.com/2021/12/14/nyregion/andrew-cuomo-book.html>

³⁷ See AG Report at 33 (describing the process by which witness Trooper #1 was transferred to the Governor's personal detail after the two made small talk at an event the day before, despite the Trooper's lacking the minimum years of service to serve in that role) and 86 (describing the process by which witness Kaitlin was offered a job interview shortly after meeting and posing for a photo with the then-Governor at a party).

³⁸ *Id.* at 88.

³⁹ *Id.* at 67.

⁴⁰ *Id.*

Committee to pursue disciplinary proceedings against Mr. Cuomo. While not all people guilty of a civil violation should lose their license, the cumulative scope of Mr. Cuomo's actions and efforts laid out above undermine the dignity of law in New York. Admission to the Bar is not an entitlement for the powerful, but an earned privilege. Mr. Cuomo has lost that privilege with his harmful behavior and flagrant disregard for the law. We expect this committee does its duty to hold Mr. Cuomo professionally accountable for his unlawful conduct.

Signed,
Erica Vladimer, Esq.
Rita Pasarell, Esq.
Elias Farah, Esq.
Leah Hebert
Elizabeth Crothers
Shana Melius