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SCJC No. 189
In the Matter of the
consideration of the suspension
of Hon. David Gross from the
office of Judge of the Nassau
County District Court, Tenth
Judicial District, pursuant to
New York State Constitution,
Article 6, section 22 and
Judiciary Law section 44,
subd. 8.

John F. Carman, for Honorable David Gross

Per Curiam:

After arrest on federal money-laundering charges, Judge
David Gross was administratively removed from the performance of
his judicial duties by the Chief Administrative Judge, pending
consideration of his suspension by this Court. Judge Gross's

suspension is uncontested; the only issue before us is whether his suspension will be with or without pay.

Section 44(8)(c) of the Judiciary Law prescribes that a "judge or justice who is suspended from office by the court shall receive his judicial salary during such period of suspension, unless the court directs otherwise." The statute creates a presumption in favor of suspension with pay, corresponding to the presumption of innocence that is basic to our justice system. In applying the statute in the context of pending criminal charges lodged against a judge, we must consider the statutory presumption as well as the issues of propriety and public confidence that arise when a judge is accused of wrongdoing. In this situation, the Court's general practice--to which we conform today--has been to suspend with pay, unless the charged misconduct is directly connected with performance of the judicial office (e.g. Matter of Garson, 100 NY2d 533 [2003]). Should later information or other circumstances warrant, we may convert the suspension to one without pay (e.g. Matter of Brennan, 65 NY2d 564 [1985]).

Accordingly, it is the determination of the Court that Judge David Gross be suspended with pay, effective immediately.

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On the Court's own motion, it is determined that Hon. David Gross is suspended, with pay, effective immediately, from the office of Judge of the Nassau County District Court, Tenth

Judicial District, pursuant to New York State Constitution, Article 6, § 22, and Judiciary Law § 44 subd. 8. Opinion Per Curiam. Chief Judge Kaye and Judges G.B. Smith, Ciparick, Rosenblatt, Graffeo, Read and R.S. Smith concur.

Decided September 21, 2005