STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

LETICIA D. ASTACIO,

a Judge of the Rochester City Court,
Monroe County.

DETERMINATION

- -

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Marvin Ray Raskin, Esq.
Richard A. Stoloff, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (John J. Postel and David M. Duguay, Of Counsel) for the Commission

Robert F. Julian, Esq., for the respondent

The respondent, Leticia D. Astacio, a Judge of the Rochester City Court, Monroe County, was served with a Formal Written Complaint dated May 30, 2017, containing five charges. The Formal Written Complaint alleged that respondent operated

an automobile under the influence of alcohol, resulting in her conviction for Driving While Intoxicated ("DWI") (Charge I), asserted her judicial office in connection with her arrest (Charge II), violated the terms of her conditional discharge in connection with her conviction by providing a breath sample for her ignition interlock device that registered a blood alcohol content ("BAC") of .078% when she attempted to start her vehicle (Charge III), failed to disqualify herself in her former client's case (Charge IV) and made discourteous, insensitive and undignified comments in four cases (Charge V). Respondent filed an amended verified Answer dated September 11, 2017.

Respondent was served with a Second Formal Written Complaint dated August 3, 2017, which was amended by letter dated September 18, 2017, alleging that respondent violated the terms of her conditional discharge on or about May 30, 2017 (Charge VI). Respondent filed a verified Answer dated September 11, 2017.

By Order dated August 15, 2017, the Commission designated Mark S. Arisohn, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on October 17 to 19, 2017, in Syracuse, New York. The referee filed a report dated March 5, 2018, which sustained the charges except as to a portion of Charge II.

The parties submitted briefs with respect to the referee's report and the issue of sanctions. Commission counsel recommended confirmation of the referee's report and the sanction of removal. Respondent's briefs conceded that she engaged in some misconduct and argued that removal was too harsh. On April 12, 2018, the Commission heard oral argument and thereafter considered the record of the proceeding

and made the following findings of fact.

1. Respondent has been a Judge of the Rochester City Court, Monroe County, since January 1, 2015. Her current term expires on December 31, 2024. Respondent was admitted to practice law in New York State in 2007.

2. Prior to her election to the City Court, respondent was employed by the Monroe County Legal Assistance Center and the Monroe County District Attorney's Office, where, among other responsibilities, she handled felony DWI cases; she was also in private practice where she had represented defendants charged with DWI.

As to Charge I of the Formal Written Complaint:

3. On Saturday, February 13, 2016, at approximately 7:54 AM, New York State Trooper Christopher Kowalski, who had been employed by the New York State Police for approximately 13 years and who was trained in DWI detection and enforcement, was traveling westbound on Interstate 490, west of downtown Rochester, when he observed a vehicle on the right shoulder of the road. Trooper Kowalski pulled over behind the vehicle.

4. There had been a light snow that morning and the road was slightly snow-covered and wet, with approximately a half-inch of snow on the shoulder. It was the coldest day of the year with the 7:54 AM temperature recorded at -2.9° F.

5. Respondent was seated in the driver's seat and was the sole occupant of the car. The car was running with the keys in the ignition; the back lights and daytime running lights were on; and, according to Trooper Kowalski, both front windows were

down when he approached. Respondent testified that she rolled her driver's window down either as the trooper approached her car or once he was at the window. Respondent was wearing sneakers, pants and a hoodie; her clothes appeared "pretty disheveled" to Kowalski.

6. Trooper Kowalski observed that both tires on the driver's side of the vehicle were flat, and the front tire was about to fall off of the rim. There was heavy front-end damage to the driver's side of the vehicle.

7. Trooper Kowalski asked respondent if she was okay and if she had been in an accident. According to Kowalski, respondent replied that she was "fine," stated that she "only thought she had a flat tire and that she didn't strike anything at that time," and also said, "I don't recall hitting anything." Respondent testified that she had left home and was on her way to the YMCA gym when "I don't know if I hit...a chunk of ice, or some debris in the roadway ... or if my tire blew out. Either way, I lost control of my car, and I realized that I had a flat, or that my car wasn't working properly .... I pulled over to the shoulder."

8. Trooper Kowalski asked respondent to get out of the vehicle and to look at the damage. He did not recall any reaction that respondent had after looking at the vehicle.

9. The trooper asked for her license and registration and respondent told him that she "didn't have anything on her." He then asked her to come back to his vehicle because "it was so cold out" to "get everything squared away, get her name, get her address, figure ... everything out." Respondent complied.

10. Respondent sat in the back seat of the patrol car, approximately one to two feet behind Trooper Kowalski, who sat in the driver's seat. The trooper observed that respondent was chewing gum and he smelled the odor of an alcoholic beverage. He asked her to remove the gum from her mouth and she did.

11. Trooper Kowalski still perceived a strong smell of an alcoholic beverage when respondent began to talk. He also observed that her eyes were bloodshot, watery and glassy, that her face was flushed and that her speech was slurred.

12. Trooper Kowalski asked respondent if she had consumed any alcohol and she replied that she did not drink at 7:00 AM; he asked again whether she had been drinking, and she replied, "I've drank in my lifetime."

13. In response to the trooper's questions about where she was coming from and where she was headed, respondent stated that she was coming from home and was going to the City Court to do arraignments at 9:30.

14. Rochester City Court was to the east from where respondent's car was located and in the opposite direction of respondent's westbound-facing vehicle. When Trooper Kowalski asked what direction she was headed, respondent stated that she was "not good with direction, east, west, north, south." Respondent testified at the hearing that her intention that morning upon leaving home was to go to the Gates YMCA for an 8:00 AM workout class before heading to City Court, where she was scheduled to handle arraignments at 9:30 AM, and that by the time of her initial exchanges with Trooper Kowalski, she had abandoned her plan to go to the YMCA before court. When respondent pulled her car over to the shoulder of the road, she was pointed in the

direction of the YMCA.

15. At approximately 8:15 AM, when Trooper Kowalski asked respondent what time it was, she responded, "7:15."

16. In Trooper Kowalski's car, when the trooper again inquired about whether respondent had consumed alcohol that morning or the night before, respondent told the trooper that she "didn't feel comfortable" in the car and "didn't want to be in the car," and she said, "I don't know what else you might do to me. For all I know, you could shoot me."

17. Trooper Kowalski had not displayed or unholstered his weapon or made any threat. Respondent testified that Kowalski never made an overt threat of force to her, yelled or used vulgarity or profanity in speaking with her. The trooper was uncomfortable about respondent's comment and got out of the car. He called dispatch to get another unit to come to the scene so he could have a witness as to what was starting to unfold, and then re-entered the patrol car and told respondent not to make any other statements of that nature.

18. Trooper Kowalski asked respondent if she would submit to any standardized field sobriety tests. She declined, stating that she could not do them because she had a brain injury during her pregnancy that had an impact on her ability to take such tests. The medical records introduced by respondent confirm that she had a structural defect in the part of the brain that controls balance and had surgery that resolved the balance issue to a limited extent. Respondent agreed to take an alphabet test and a counting test administered by Trooper Kowalski, which she passed.

19. Based on his observations and professional expertise, Trooper Kowalski formed an opinion that respondent was intoxicated, and he arrested her at 8:43 AM.

20. When she was placed under arrest, respondent told Trooper Kowalski that he did not have "sufficient probable cause to arrest" her and did not "have enough for a conviction"; she also said, "With all due respect, I don't know you, so you don't do DWIs, and you don't know what you're doing, but you're making a very big mistake ... I'd rather you call someone who does know what they're doing." At the hearing, respondent testified that she "went over the factors" with the trooper and "was just explaining to him why this wasn't sufficient for a DWI."

21. At around the time of the arrest, Trooper Kowalski asked respondent to take a preliminary breath test ("PBT") to detect the presence of alcohol. Respondent declined the test and told Kowalski that she wanted to have a lawyer present.

22. Respondent testified that earlier, sometime after she had pulled over onto the shoulder of the road, she called an acquaintance, Christian Catalano, an attorney, and asked him to help her change her flat tire, after which she fell asleep. She was waiting for him in her car when Trooper Kowalski pulled over behind her vehicle.

23. Trooper Casey Dolan, a 21-year veteran of the State Police, responded shortly after 9:00 AM to Kowalski's call for back-up and arrived at the scene with a PBT device. When Trooper Dolan pulled his patrol vehicle behind Trooper Kowalski's vehicle, there was another vehicle parked in front of respondent's vehicle that had not been present when Trooper Dolan had passed the location a short time earlier.

That was the vehicle of Mr. Catalano, who had recently arrived on the scene. Trooper Dolan passed the PBT device to Trooper Kowalski through the window. Trooper Dolan heard respondent speaking in a raised, irritated voice, and she seemed upset.

24. Trooper Dolan told respondent, referring to the PBT, "This trooper has an obligation to ask you to submit to that. You were involved in a motor vehicle accident." Respondent replied, "No, he doesn't. He can just go mind his own fucking business."

25. Trooper Kowalski spoke with Mr. Catalano, who respondent stated would act as her attorney, about having her submit to a PBT. Trooper Kowalski discussed the possibility of "unarresting" respondent with Catalano and allowed him to speak privately with respondent to discuss whether she would take the PBT. Kowalski admitted at the hearing that despite what he told Catalano, he had no intention of "unarresting" respondent.

26. Respondent testified that after discussing the PBT with Mr. Catalano, she provided a breath sample three times. The third test registered positive for the presence of alcohol on her breath at ".19," according to Kowalski. Kowalski explained at the hearing that the first two tests showed a "zero" reading because respondent did not blow into the instrument for a sufficient amount of time, but he kept no records to corroborate that fact. Nor did Kowalski show the claimed positive result of the third test to anyone; it was his practice and procedure that he was not required to do so.

27. At approximately 9:23 AM, Trooper Kowalski transported

respondent to the New York State Police barracks. He did not question respondent during the trip. Respondent was upset, irate, belligerent, loud and swearing during the drive. She stated: "I can't believe you're doing this to me. You're fucking ruining my life"; "You don't have to do this. This isn't part of your job"; and "Why are you fucking doing this to me?" Respondent testified that she regrets the words she said in anger and that later, while at the station, she told Trooper Kowalski, "I'm really sorry about the way that I behaved, about the things that I said to you. You have to understand the impact this is going to have on my life, irrespective of the outcome. And I'm sorry. I was really, really upset, and I really couldn't believe this was happening, but ... I shouldn't have spoken to you that way and I apologize."

28. Respondent remained irate, angry and upset and was unruly and swearing loudly while at the barracks. Lieutenant Jon Lupo, the designated Acting Zone Commander on duty, heard respondent yelling at Trooper Kowalski and noted that she sounded upset and that her speech was "slurred." Lupo sent an email to his boss at 10:04 AM stating about respondent, "Her attorney is present, and so far she's cooperative."

29. Lieutenant Lupo, a 30-year veteran of the New York State Police who had been trained as a Drug Recognition Expert and had administered and supervised the Standardized Field Sobriety Testing Program between 1997 and 2001, introduced himself to respondent as Trooper Kowalski's supervisor. Respondent insisted that she not be put through the arrest process. According to Lupo, she appeared to be on an "emotional roller coaster." She vacillated between being very upset, then being more composed, and then being upset again. Lupo characterized her behavior as "pleading in a

way." Respondent used the word "fuck" on a couple of occasions in Lupo's presence. Lupo observed that respondent was handcuffed to the bench reserved for arrestees.

30. Lieutenant Lupo, standing no more than three or four feet from respondent, observed that her eyes appeared glassy and very bloodshot, and he detected the stale smell of an alcoholic beverage that he recognized from his experience. In Lieutenant Lupo's opinion, respondent was impaired by alcohol.

31. At the barracks, Trooper Kowalski read Miranda and DWI warnings to respondent and asked her at approximately 10:43 AM if she would submit to a chemical test for alcohol. Respondent refused the test at that time and again at approximately 11:12 AM. Thereafter, Kowalski completed a report of the refusal to submit to a chemical test.

32. Trooper Kowalski then issued Uniform Traffic Tickets to respondent for Driving While Intoxicated (Vehicle and Traffic Law §1192[3]), a misdemeanor, and for the traffic infractions of Stopping/Standing/Parking on Highway and Unsafe Tire.

33. On August 15, 2016, Canandaigua City Court Judge Stephen D. Aronson, sitting as an Acting Judge of Rochester City Court, presided over a non-jury trial on the simplified traffic informations filed pursuant to the tickets issued to respondent. At the trial, Troopers Kowalski and Dolan testified for the prosecution, and Mr. Catalano testified for the defense. On August 22, 2016, Judge Aronson found respondent guilty of the misdemeanor of Driving While Intoxicated (Vehicle and Traffic Law §1192[3]) and sentenced her to a one-year conditional discharge. Both traffic infractions were dismissed.

34. On October 4, 2017, on appeal, Acting Monroe County Court Judge William F. Kocher affirmed the judgment convicting respondent of Driving While Intoxicated.

35. Respondent had a full and fair opportunity in the Rochester City Court criminal action and on its subsequent appeal to County Court to litigate the issue of whether she was driving while intoxicated on February 13, 2016.

36. With respect to her consumption of alcohol, respondent acknowledged that she drank wine the night before her arrest. She testified during the Commission's investigation that she did not consume alcohol after 10:00 PM on February 12, 2016, but conceded at the hearing that in connection with an alcohol evaluation a few weeks after her arrest, one of her counselors reported that respondent had stated that "she did drink alcohol the night before, consuming 2-3 glasses of wine" and that she "started [drinking] at about 1030/11 pm and unsure when she finished." Respondent testified that the report is inaccurate as to what she told the counselor about when she started drinking that night. She also acknowledged telling another one of her counselors, in November 2016, that she drank three glasses of wine the night before her arrest. She further acknowledged that on the morning of her arrest, while at the side of the road with Trooper Kowalski and Catalano, she told Catalano that she had not consumed alcohol the night before.

37. On March 24, 2016, respondent underwent a comprehensive chemical dependency evaluation performed by Elizabeth Rybczak, a Credentialed Alcoholism and Substance Abuse Counselor ("CASAC"). Ms. Rybczak determined that

respondent "is not being recommended for any treatment at this time as patient does not meet criteria for a substance use disorder."

38. In the absence of any argument or evidence that respondent did not have a full and fair opportunity to contest the charge of Driving While Intoxicated at her criminal trial that resulted in a judgment of conviction under a "beyond a reasonable doubt" standard of proof, the doctrine of collateral estoppel forecloses respondent from contesting the fact that she was driving while intoxicated on February 13, 2016. Moreover, the persuasive evidence establishes that respondent was found in her car on the side of the road, was unable to explain why her car had two flat tires and part of her front bumper missing, and had an odor of an alcoholic beverage, bloodshot, watery and glassy eyes and slurred speech. This evidence independently supports the finding by a preponderance of evidence that on February 13, 2016, respondent operated an automobile while intoxicated.

39. The record does not support a finding of any police misconduct and certainly nothing that can be found to justify respondent's combativeness and evasiveness preceding and following her arrest on February 13, 2016.

As to Charge II of the Formal Written Complaint:

40. After respondent got into Trooper Kowalski's car on February 13, 2016, he asked her where she was headed. In response to the inquiry, respondent stated, "I'm going to City Court to do the arraignments at 9:30 this morning." Her comment was an accurate response to the trooper's question. Respondent was scheduled to preside at

arraignments at 9:30 AM that day in the Rochester City Court, and although she initially had planned to go to an exercise class at the YMCA before going to court, by the time she was questioned by Kowalski she had abandoned her plan to go to the gym since it was too late for the class. Although Trooper Kowalski understood from respondent's comment that she was a City Court judge, it was not established by a preponderance of the evidence that her response to the trooper was an attempt to assert her judicial office to advance her private interests in connection with her arrest.

41. At the police barracks, respondent told Lieutenant Lupo that she had court responsibilities that morning, that she had arraignments scheduled and that nobody at the court was aware that she was not going to be showing up. Lieutenant Lupo's notes from that morning reflect some of the statements respondent uttered: "Please don't do this"; "I have to go to work"; "I have arraignments"; and "I have court right now." (His notes also indicate "crying," "begging," "pleading.") Lieutenant Lupo understood respondent's remarks to mean that she did not want to be arrested or to proceed with the arrest process.

42. Respondent's request to telephone the court to advise the court that she would not be there at 9:30 AM was honored.

43. Respondent's statements to Lieutenant Lupo when she asked him to "[p]lease don't do this" because "I have arraignments" and "I have court right now" were an attempt to advance her private interests in connection with her arrest for Driving While Intoxicated.

As to Charge III of the Formal Written Complaint:

44. On August 22, 2016, in connection with her sentencing to a one-year conditional discharge for her conviction for Driving While Intoxicated, respondent was provided with a copy of her "Conditions of Conditional Discharge," a three-page form which she signed and dated. The form clearly stated, in bold type near the top of the first page, the requirement that she "Abstain from Alcoholic Beverages and All Products That Contain Alcohol" during the one-year period of discharge.

45. As a condition of her sentence, respondent was required to install an ignition interlock device ("IID") on her vehicle. The form that respondent signed stated that a device indication of "a failed test or re-test where the BAC was .05% or higher" would constitute a violation of the IID conditional discharge.

46. On or about September 30, 2016, the Monroe County Office of Probation notified Judge Aronson and the District Attorney that there was reasonable cause to believe that respondent had violated the terms of her conditional discharge by failing an IID start-up test on September 12, 2016, at 7:32 AM, with a BAC of .067%. On October 11, 2016, Judge Aronson signed a Declaration of Delinquency and arraigned respondent on the alleged violation. With the consent of the parties, the matter was adjourned to November 16, 2016, to allow respondent to engage in appropriate alcohol treatment.

47. On or about October 31, 2016, the Monroe County Office of Probation notified Judge Aronson and the District Attorney that there was reasonable cause to believe that on October 3, 2016, respondent had violated the terms of her

conditional discharge by attempting to start and operate her vehicle while testing positive for alcohol (.078% BAC). The October 3, 2016 violation had not yet been reported when respondent appeared in court on October 11, 2016. On November 3, 2016, Judge Aronson signed a second Declaration of Delinquency that alleged respondent had violated her conditional discharge by failing an IID start-up test on October 3, 2016, at 9:37 AM, with a BAC of .078%.

48. On November 3, 2016, respondent attended a substance abuse intake at Strong Recovery. Her assessment included a breathalyzer and a supervised urine toxicology screen, both of which were negative. In a report dated November 15, 2016, Karen Hospers, CASAC, gave a diagnostic impression of "alcohol use disorder, mild" and recommended that respondent attend a ten-week relapse prevention group. Respondent successfully completed the recommended program.

49. On November 16, 2016, respondent appeared before Judge Aronson and pled guilty to violating her conditional discharge by attempting to start and operate her vehicle on October 3, 2016, while testing positive for alcohol with a .078% BAC, and thereafter failing to perform an IID start-up re-test. Respondent's guilty plea satisfied all outstanding delinquency charges.

50. Judge Aronson amended the conditional discharge by extending the IID requirement for an additional period of six months and requiring that respondent comply with any treatment recommendations made by her therapist.

51. Respondent acknowledged signing and dating each of the three pages of the conditional discharge form at her sentencing for her DWI conviction and

taking a copy home with her.

52. When she pled guilty to violating her conditional discharge, respondent told the court that she did not review the documents she had received and signed at her sentencing and "didn't understand" that abstention from alcohol was a condition of her sentence. She apologized to the court and reiterated, "I didn't understand. I do understand now," and told the court that "[t]here won't be" any future violations.

53. Respondent testified at the hearing that she consumed alcohol "more than once" between her DWI conviction on August 22, 2016, and sometime in October 2016, and she reiterated that she did not read the document stating the terms of her conditional discharge. She testified that it was her "understanding" that she "was sentenced to the minimums" and she stated, "I know what the minimums are by heart, I didn't need to review the terms." At the oral argument before the Commission on April 12, 2018, she stated that even if she had read the document, "I don't think that would have necessarily changed my behavior."

54. Respondent testified that, prior to providing an IID breath sample on October 3, 2016, she "was drunk," having consumed four glasses of wine and three shots of tequila, and asked her aunt to drive because she knew that she should not have been driving, but that respondent "did the blow" that resulted in her conviction.

As to Charge IV of the Formal Written Complaint:

55. On January 21, 2015, respondent was presiding in the Rochester

City Court when defendant James Thomas was brought into the courtroom to be arraigned on a Petit Larceny charge. Respondent failed to disqualify herself from presiding over the arraignment notwithstanding that her impartiality might reasonably be questioned because of her prior attorney-client relationship with the defendant.

56. Respondent had represented Mr. Thomas as his defense attorney approximately three years earlier on a felony charge. Respondent represented Mr. Thomas for approximately one year and during that period had visited him approximately two dozen times at the county jail. Mr. Thomas was on parole supervision in connection with the felony when he appeared before respondent on January 21, 2015.

57. When Mr. Thomas was brought by Sheriff's Department personnel into respondent's courtroom, he smiled and waved at respondent, who was on the bench. Respondent laughed and disclosed to counsel that Mr. Thomas was a former client and added, "And I like him"; she then said, "Well, I mean, I can ... arraign him ... but I'm going to transfer it."

58. Respondent asked her court clerk, "Can it not go to Johnson, please?" Respondent was referring to Rochester City Court Judge Teresa Johnson. She then commented from the bench about Mr. Thomas, stating:

- "[W]hen ... you said the name I'm like, 'Aw, come on'";
- "He freaking just got out. I represented him ... He just, just got out";
- "Aww, I'm so sad about this."

59. After a short break, respondent's court clerk told her, "I was told that you can arraign him" and the case would then be transferred to a judge other than Judge

Johnson. Respondent read Mr. Thomas the charge and assigned counsel, who entered a plea of not guilty on his behalf. Respondent told Mr. Thomas that it was not appropriate for her to preside over his case, and when Mr. Thomas asked why, she replied, "I would love to preside over your case, but I don't ... want any conflicts."

60. Respondent set a "courtesy" bail at $50, as requested by his attorney. In setting bail, respondent stated that since the defendant was being held, "it really doesn't matter," but that since he was being held on bail concurrent to the parole hold, he would be "getting time on these charges."

61. Mr. Thomas told respondent that the public defender "was good, but you were the best." When the next case was called, respondent commented, "I totally love him. I'm so sad that he's in jail right now."

62. At the hearing, respondent acknowledged feeling "sympathetic" towards Mr. Thomas, and she understood that presiding over his case would create the appearance of impropriety based upon the nature of their relationship and his conduct in her court. She also testified that typically Mr. Thomas' case would have been transferred to Judge Johnson but that she did not want the case to go to her because Judge Johnson was not very "nice to anyone" and that if she got the case, Mr. Thomas would get harsher treatment and a less favorable result. Respondent acknowledged that requesting that Thomas' case not go to Judge Johnson was inappropriate. She also testified that when she handled this case, during her first month as a judge, she "was still pretty new and ... didn't know the procedure for transferring cases."

63. Respondent understood that setting bail on Mr. Thomas was an act

of judicial discretion and that Mr. Thomas derived a benefit by getting credit for jail time on his Petit Larceny charge as a result of her conduct.

As to Charge V of the Formal Written Complaint:

A. *People v. T. L.*

64. On January 27, 2015, respondent was scheduled to arraign T. L., who was in custody on a charge of Criminal Trespass in the Third Degree, a misdemeanor.

65. Prior to calling Ms. L.'s case, respondent learned from her clerk that Ms. L. was allegedly biting and spitting on people and may have been cursing, kicking and punching Sheriff's Department deputies and using racial slurs while being transported to the court. While awaiting the case, respondent spoke from the bench with a sheriff's deputy about Ms. L., stating, "I heard she's going crazy," and she commented further to the deputy, "Well, tase her"; "Shoot her?"; "What do you do, billy-club people?"; "Well, punch her in the face and bring her out here. You can't take a 16-year-old?"; "What do you want me to do, leave her? I don't like her attitude"; "She needs a whoopin'"; and "Is she crazy or is she bad?" Ms. L.'s arraignment was postponed.

66. At the hearing, respondent testified that when she made the comments in this case, during her first month as a judge, she was having "a joking conversation" with a deputy between arraignments and she thought the comments were off the record. She acknowledged that, "in retrospect," her comments were inappropriate.

B. *People v. X. V.*

67. The allegations as to *People v. X. V.* are not sustained and therefore are dismissed.

C. *People v. D. Y.*

68. On January 15, 2015, respondent arraigned D.Y., who was in custody after being charged with Disorderly Conduct, a violation, for intentionally blocking traffic by walking in the middle of the road.

69. After reading the charge against him and advising counsel that Mr. Y. had other charges pending in Rochester City Court and was scheduled for a mental health examination, respondent told Mr. Y. that she would sentence him to time served if he pled guilty to the charge. Mr. Y.'s attorney, after conferring with the defendant, advised respondent that he would plead guilty.

70. Prior to accepting Mr. Y.'s plea, respondent told the defendant to "stay out of the street. It's super annoying. I hate when people walk in front of my car. If there was [sic] no rules, I would totally run them over because it's disrespectful."

71. At the hearing, respondent acknowledged that she should not have said she would run people over.

D. *People v. D. W.*

72. On August 15, 2015, respondent arraigned D. W., who was charged with the misdemeanor of Sexual Misconduct. Respondent read the charge to Mr. W., explained that she was issuing an order of protection in favor of the alleged victim, and advised Mr. W. that he was to have no contact with the alleged victim. Respondent had previously signed an arrest warrant for Mr. W. in the matter and knew that he and the

alleged victim were classmates, so she clarified that Mr. W. could not interact with the alleged victim at school.

73. Mr. W.'s attorney, who opposed an order of protection, referred to the alleged victim's three-week delay in signing a statement against Mr. W. and stated, "It appears to me to be a case of buyer's remorse." Respondent laughed at the "buyer's remorse" comment and told the Assistant District Attorney, "That was funny. You didn't think that was funny."

74. A minute or two later, following Mr. W.'s arraignment, respondent continued commenting about the "buyer's remorse" remark, stating:

- "Oh, man. I don't mean to be so inappropriate. I thought that was freakin' hilarious. She ... said that she didn't sign it 'til three weeks later; it was a case of 'buyer's remorse'";
- "Yeah, I thought it was funny. She [referring to the prosecutor] didn't think it was funny ... She was offended. I thought it was hilarious."

75. Respondent understood from her professional experience in the Domestic Violence Bureau of the District Attorney's Office that sexual assault victims are typically hesitant to go forward out of embarrassment, shame or fear of becoming further victimized.

76. Respondent testified that the *W.* case was at "the end of the docket, and people weren't there," but that if the purported victim or her family were present she "would have been mortified at them having the impression that I ... took the situation lightly or that I ... didn't care about what was alleged to have happened to her."

As to Charge VI of the Second Formal Written Complaint:

77. On August 22, 2016, after being convicted of Driving While Intoxicated and sentenced to a one-year-conditional discharge, respondent signed and received a copy of her "Conditions of Conditional Discharge" that required her, *inter alia,* to "submit to any recognized tests that are available to determine the use of alcohol or drugs" and to install and maintain a functioning ignition interlock device in her vehicle.

78. On May 1, 2017, respondent booked a one-way ticket to Thailand and she departed the following day. Respondent testified that she intended to stay in Thailand for several months until sometime in August 2017.

79. On or about May 10, 2017, Assistant District Attorney V. Christopher Eaggleston forwarded to Judge Aronson a notification from the Monroe County Office of Probation that the IID in respondent's vehicle had registered a failed start-up test on April 29, 2017, with a .061% BAC that was provided by an individual who could not be seen on the camera.

80. Judge Aronson sent a letter dated May 15, 2017, to ADA Eaggleston and respondent's attorney stating that he would not issue a Declaration of Delinquency concerning the failed start-up test on April 29, 2017, but that he "intend[ed] to enforce the provision of the conditional discharge requiring the defendant to submit to tests for alcohol use" and that respondent was "require[d] ... to submit to an Etg [sic] lab analysis of her urine sample." Judge Aronson directed in his letter that the test be done "**immediately**" (emphasis in original) and that respondent's attorney provide the lab

report to the court. In accordance with Judge Aronson's requirement, Rochester City Court Clerk Jody Carmel prepared a document for the Monroe County Office of Probation on May 15, 2017, confirming the ordered EtG test.

81. On May 23, 2017, at the direction of Judge Aronson, Ms. Carmel drafted a notice of Judge Aronson's May 15, 2017 order that respondent "must" immediately submit to an EtG lab analysis of her urine to be provided to the court and that "If defendant has not submitted to the ordered E[t]G test, her presence with her attorney is required in Rochester City Court on Tuesday, May 30 at 12:00 p.m." On May 24, 2017, Ms. Carmel mailed the notice to respondent, her attorney and the ADA.

82. Respondent did not appear in court on May 30, 2017. On that date, her attorney told the court that respondent was in Thailand, having arrived there on May 3rd intending to return in August, and he read into the record an email that he had sent to her on May 26, 2017, which stated in part: "Over the last several weeks I notified you by telephone that Judge Aronson has ordered you to submit to an immediate EtG test to determine whether or not you are consuming alcohol. ... I also sent you text messages to that effect. Today I received a letter from the Rochester City Court requesting that I appear with the results of the EtG test on Wednesday, May 30th, or in the alternative that being such results are not available, that you appear personally."

83. Judge Aronson signed a Declaration of Delinquency on May 30, 2017, finding reasonable cause to believe that respondent had violated the terms of her conditional discharge by failing to comply with his directives to submit to an EtG test or to appear in court on May 30, 2017. On the same date he issued a bench warrant for

respondent's arrest for her failure to appear in court as directed.

84. Respondent returned to Rochester on June 4, 2017. The next morning, after meeting with her administrative judge, she was taken into custody by Monroe County Sheriff's personnel pursuant to the bench warrant and was brought before Judge Aronson, who ordered her committed to jail pending a hearing.

85. During the proceedings on June 5, 2017, Judge Aronson told respondent that her attitude appeared "contemptuous," citing her "seemingly total indifference to the responsibilities under [her] conditional discharge" with respect to the IID on her vehicle, which was the basis for the court-ordered urine test, and her "apparent exile from the jurisdiction of the Court without advance notice to a place halfway around the world knowing that your CD requires random alcohol testing." He asked her, "How could you possibly not have considered what would happen if I ordered you to take a random alcohol screen if you were halfway around the world not just for a two-week vacation, but for three months?" Judge Aronson also stated, "I don't know when you got back into the country or to this city, but you did not turn yourself in when you returned."

86. Respondent declined an offer to plead guilty to violating the terms of the conditional discharge and requested a hearing, which was held on June 8, 2017. Respondent testified at that hearing that she had been unable to comply with the court-ordered urine test or to appear in court on May 30 on short notice. She told the court that she learned of the court-ordered EtG test on May 27 from her attorney's email and since she was unable to book a return flight from Thailand immediately, she told her attorney to ask for an adjournment of the court date; she ultimately departed on June 3 and

returned on June 4, intending to turn herself in the next day. She also testified that she was unable to communicate with her attorney by telephone after May 7th after switching her service provider to a less expensive option and could only communicate by email. Judge Aronson found that she violated the conditional discharge by failing to submit to an EtG test or to appear in court by May 30th as ordered and remanded her pending sentencing.

87. On July 6, 2017, Judge Aronson revoked the sentence of conditional discharge previously imposed upon respondent for her conviction for Driving While Intoxicated and sentenced her to a 60-day term of incarceration and a three-year term of probation, which included the condition that respondent wear a SCRAM alcohol-monitoring device for six months.

88. Judge Aronson's finding that respondent violated her conditional discharge was affirmed on appeal by the Monroe County Court on December 8, 2017.

89. When respondent booked her trip to Thailand and left on May 2, 2017, she understood that she was subject to being required to submit to alcohol testing as a condition of her conditional discharge.

90. Prior to leaving the country, respondent did not notify her administrative judge or her attorney that she planned to be in Southeast Asia for approximately three months.

91. Although there is no provision in the conditional discharge prohibiting travel out of the United States, respondent was required to notify the probation office "prior to any change in address." Respondent failed to notify the

Monroe County Office of Probation of her planned extended absence.

92. On May 7, 2017, respondent called her attorney in response to his email advising her of a "bad blow" on her ignition interlock device and informed him that she did not plan to return home until August. She testified that there had been a "positive blow" into the IID on her vehicle earlier in April, resulting in a lockout and shutdown that required servicing, that she understood prior to her departure that that matter had been cleared up, and that when she spoke to her attorney on May 7th she thought he was referring to the incident in early April.

93. Respondent testified that after learning on May 27, 2017, at approximately 3:30 AM (4:30 PM Eastern Standard Time on May 26, 2017, in Rochester) that she had to appear in court in four days or get an EtG test in Thailand, she told her attorney that she believed it was "all moot anyway" because of a "jurisdictional defect" with respect to the supervision of her IID and asked him to request an adjournment.

94. After learning on May 30, 2017, that Judge Aronson had issued a bench warrant for her arrest, respondent began investigating return flights from Thailand. She departed on June 3, a week after learning of her scheduled court appearance.

95. On or about May 30, 2017, respondent violated the terms of the conditional discharge imposed in connection with her conviction for Driving While Intoxicated.

Additional Findings

96. On November 16, 2016, respondent was evaluated by Dr. George

Anstadt, through a referral from the Office of Court Administration. Dr. Anstadt reported that respondent's DWI "episode was motivated by a constellation of adverse events occurring simultaneously, causing her to resort to too much alcohol," and he advised that respondent was able to perform her judicial duties at that time.

97. Respondent began seeing a clinical psychologist, Vincent Ragonese, in October 2016. In a letter dated October 9, 2017, Dr. Ragonese reported that respondent admitted consuming alcohol prior to pleading guilty to violating the terms of her conditional discharge, and he wrote that he "believe[d] that was an instance of self-medicating due to difficulty adjusting to her situation and not to alcoholism." Dr. Ragonese reported that "[i]n the time that I have been working with Ms. Astacio I have not seen any evidence that suggests she has a substance abuse problem."

98. At the hearing, respondent introduced a report of a lab analysis of a hair sample that concluded she had "most likely" not used alcohol from the end of May through August 2017.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.2(C), 100.3(B)(3), 100.3(E)(l)(a)(i) and 100.4(A)(2) of the Rules Governing Judicial Conduct ("Rules") and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. Charges I through V of the Formal Written Complaint and Charge VI of the Second Formal Written Complaint are sustained insofar as they are consistent with the above

findings and conclusions, and respondent's misconduct is established.

The totality of respondent's misbehavior as shown in the record before us – her operation of a vehicle while under the influence of alcohol, resulting in her conviction for Driving While Intoxicated; her assertion of her judicial position in attempting to avoid the consequences of her arrest; her repeated, willful violations of the terms of her conditional discharge; and her improper conduct on the bench – demonstrates her unfitness for judicial office and requires the sanction of removal.

Respondent's Misconduct

As the Court of Appeals has stated, Driving While Intoxicated is "'a very serious crime' ... that has long posed a 'menace' to highway safety ... and has caused many tragic consequences" (*People v Washington*, 23 NY3d 228, 231 [2014] [internal citations omitted]). According to the National Highway Traffic Safety Administration, every day almost 29 people die in alcohol-related vehicle crashes in the United States; in New York State there were 283 deaths in traffic accidents due to drunk driving in 2016, and nationwide, there were 10,497 such fatalities, accounting for 28% of all traffic deaths that year.[1] While respondent's behavior in operating her vehicle in an intoxicated condition fortunately did not result in injury, it endangered public safety and resulted in significant damage to her vehicle as a result of an incident she could not clearly recall or explain. Her conduct also violated the law that she is called upon to administer in her own court, thereby undermining her effectiveness as a judge and bringing the judiciary as

[1] https://www.nhtsa.gov/risky-driving/drunk-driving#2491.

a whole into disrepute.

Although respondent, who had refused to submit to a chemical test for alcohol during her arrest, has denied that she was intoxicated at the time, she had a full and fair opportunity to litigate the issue in the criminal matter, where her conviction for Driving While Intoxicated established her guilt of that offense beyond a reasonable doubt. By itself, her conviction, which was affirmed on appeal, provides a basis for discipline. *See* cases cited herein, *infra* at p 36.

Exacerbating this serious misconduct – which, troublingly, occurred as respondent was on her way to court to perform judicial duties – respondent attempted to lend the prestige of her judicial position to advance her private interests by telling a supervisor at the police barracks, as her arrest was being processed, that she "has court right now" and "has arraignments" while asking, "Please don't do this." Precisely what respondent was hoping Lieutenant Lupo might do for her at that stage is uncertain, but Lupo, who already knew that respondent was a judge because of her earlier references to her judicial status, testified that he understood that she was "ma[king] that statement in connection with not wanting to be arrested, not wanting to proceed with the arrest process." These gratuitous references to her judicial position while attempting to avoid the consequences of her arrest were an implicit request for special treatment, conveying the appearance that she was calling attention to her status as a judge in order to bolster her plea to the police. By itself, such behavior can warrant public discipline even when a judge has been found not guilty of the underlying offense charged. *See Matter of Werner*, 2003 NYSCJC Annual Report 198. As we stated in *Werner*: "Public confidence

in the fair and proper administration of justice requires that judges, who are sworn to uphold the law, neither request nor receive special treatment when the laws are applied to them personally" (*Id*).

Respondent's argument that in referring to her judicial duties while pleading with the supervisor she was only seeking to telephone her court to advise her clerk that she could not handle arraignments that morning is inconsistent with her actual words to Lupo ("Please don't do this"), which he noted contemporaneously. (His notes also indicate "crying," "begging," "pleading," "I have to go to work," "I have court right now.") Since it was clear that, as Lupo understood, she was "pleading" because she did not want to be arrested, any reference to her judicial position in that context could be perceived as conveying the message that because she is a judge, she should be exempt from the ordinary standards of law enforcement that apply to others. As we have previously indicated, such a message is repugnant and inconsistent with ethical standards prohibiting a judge from using the prestige of judicial office to advance private interests (*see, e.g., Matter of Maney*, 2011 NYSCJC Annual Report 106; Rules, §100.2[C]). Gratuitously referring to the judge's judicial position in circumstances conveying the appearance of seeking special consideration is also inconsistent with Rule 100.2(A), which requires a judge to avoid even the appearance of impropriety.

Giving respondent the benefit of a doubt, we accept the referee's conclusion that respondent's earlier statement to Trooper Kowalski at the scene of her arrest that she was "going to City Court to do the arraignments at 9:30" was not an improper assertion of her judicial position since it was an accurate response to the

trooper's question. Nevertheless, her comment provided a significant context for her subsequent statements to him about why there was no basis for arresting her.[2] Having identified herself as a judge, she attempted to dissuade the trooper from arresting her by lecturing him about the law, advising him repeatedly that he lacked "probable cause" and "enough for a conviction" and warning that he was "making a very big mistake." Explaining these statements, respondent testified at the hearing, "I went over the factors ... I was just explaining to him why this wasn't sufficient for a DWI." By making such statements after referring to her judicial status, she was not simply defending herself, but was giving her "unsolicited judicial opinion" about the merits of the arrest in an effort to persuade the trooper to drop the matter. *See Matter of Ayres*, 30 NY3d 59, 64-65 (2017) (town justice who was not a lawyer referenced his judicial status while acting as his daughter's advocate in a traffic case, thereby using his judicial position for personal gain).

Following her conviction for Driving While Intoxicated, respondent was sentenced to a one-year conditional discharge, the terms of which required that she "Abstain from Alcoholic Beverages and All Products That Contain Alcohol," that she install an ignition interlock device ("IID") on her vehicle and comply with the device's requirements, and that she submit to testing for alcohol or drugs. Notwithstanding those obligations, respondent has acknowledged that within days of her sentencing she began

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[2] Respondent's argument that the trooper did not know she was a judge until they were at the police barracks is belied by her testimony that when she told him she could not perform the standard field sobriety tests because she had a brain injury, he mocked her by asking, "How can you have a brain injury if you're a judge?"

drinking alcohol and was soon "drinking heavily" to cope with stress, and, within six weeks of her sentencing, she willfully attempted to engage in the same reckless, unlawful behavior that had resulted in her original conviction. On two separate occasions she was captured in photographs blowing into the IID in her vehicle, which recorded significant levels of blood alcohol content. A few weeks later, in satisfaction of her outstanding alleged violations, she pled guilty to attempting to start and operate her vehicle on one of those occasions with a .078% BAC.

In pleading guilty to that violation, respondent asserted that she had not read the conditional discharge papers and therefore was unaware that alcohol consumption was prohibited, notwithstanding that the requirement was listed in bold type near the top of the first page of the form, that she had read and signed the form on the date of her sentencing and was provided with a copy of it, and that she was generally familiar with the form since she had used in her own court. In view of these factors, her claim seems unpersuasive, although, if true, her lack of vigilance in ensuring that she understood the requirements of her conditional discharge would show an unacceptable indifference to the court-imposed directives she was legally bound to follow.[3] Moreover, that explanation provides no excuse for her patently unlawful behavior, only weeks after her sentencing for DWI, in attempting to start and operate her vehicle despite knowing that she was impaired by alcohol. As respondent has acknowledged, when she attempted to start her vehicle on that occasion she "was drunk" and knew that she should not be

[3] Also troubling is respondent's statement at the oral argument before the Commission that "even if I had [read the papers], I don't think that would have necessarily changed my behavior."

driving, having consumed four glasses of wine and three shots of tequila. Respondent's only explanation for that inexcusable behavior is that it occurred when she had been "partying" with a relative and that she did not intend to "disrespect" or violate the law.

At her sentencing for violating her conditional discharge, respondent apologized to the court, accepted responsibility for her conduct and told the court that she now understood the terms of her sentence and that "I can tell you that from today on, there won't be any violations" of her conditional discharge; she stated, "I can assure you that it won't happen again. I didn't understand. I do understand now."

Nevertheless, six months later, just two days after her IID recorded another "positive blow" by someone who could not be seen on the device's camera[4], respondent booked a one-way ticket to Thailand and departed the following day, intending, she testified, to remain for three months (a period that would coincide with the final three months of her conditional discharge). Prior to her departure, she did not inform either her administrative judge, her attorney or the probation office of her planned absence, nor did she ensure that during that time she would be available for communication regarding her compliance with court-mandated conditions. When the court, upon learning of the latest "positive blow" two weeks later, directed that she "immediately" provide a urine sample for testing or else appear in court on May 30, 2017, respondent did not obtain the required testing or appear in court as directed. In fact, although she claims she learned of the court's ultimatum three days before the return date, she did not return home for

[4] The circumstances of the "positive blow" on April 29 were not fully developed in the record, and respondent has denied that she aware of that incident when she booked her trip.

another week, and when she finally returned, she failed to surrender herself on the outstanding warrant that had been issued for her failure to appear. At the subsequent court hearing, respondent denied that she intentionally violated her conditional discharge, noted that she had never previously been asked to submit to alcohol testing pursuant to its terms, and stated that she had been unable to comply with the court's directives to obtain a urine test or to appear in court on May 30th on short notice. Finding respondent guilty of violating the terms of her sentence, the court re-sentenced her to 60 days in jail, three years of probation and the requirement that she wear a SCRAM ankle monitor for six months.

These repeated, willful violations of the terms of her conditional discharge during a period when she was subject to the court's authority as a result of her conviction demonstrate a persistent, flagrant disregard for her obligation to comply with court-ordered conditions and directions and for her ethical responsibilities as a judge.

The record also establishes that on several occasions respondent engaged in misconduct in connection with her performance of judicial duties. In *People v Thomas*, she arraigned a former client although her impartiality could reasonably be questioned not only because of the prior attorney-client relationship but because of her evident bias, which required her recusal (Rules, §100.3[E][1][a]). Even if respondent mistakenly believed that conducting the arraignment was permissible as long as she subsequently transferred the case, her handling of the proceeding, including her repeated expressions of fondness for her former client and her misuse of her judicial position to benefit him, created an unmistakable appearance of favoritism. Her undisguised attempt to benefit the

defendant by asking her clerk not to transfer the case to a particular judge whom respondent viewed as harsh was particularly improper. The defendant, who was being held on a parole violation arising out of the matter in which respondent had represented him, also benefited from her decision to set a $50 "courtesy" bail, which would give him credit for jail time on the current charge. When a conflict with a party requires disqualification, a judge must recuse at the outset of the case and must not handle an arraignment since arraignments are a significant stage in the criminal proceeding requiring the exercise of discretion (*Matter of LaBombard*, 11 NY3d 294, 298-99 [2008]; and *see* Adv Ops 09-223, 14-166).

In three other cases respondent made discourteous, undignified or otherwise inappropriate comments while presiding over criminal matters in her courtroom. Her response to a defense attorney's comment mocking an alleged victim's claim of sexual abuse was insensitive and conveyed the appearance that respondent regarded the criminal charge as an appropriate subject for humor. Respondent's testimony that she was caught off-guard by the attorney's words, laughed involuntarily and then tried "to smooth it over" is belied by the transcript of the proceeding, which indicates that after laughing and commenting that the attorney's remark "was funny," she exacerbated the impropriety by returning to the subject a minute or two later, repeating the insensitive remark, chiding the prosecutor for failing to find the comment amusing and commenting that she herself found it "freakin' hilarious." It should be noted that while the other instances of respondent's on the bench misbehavior in this record occurred during her first month as a judge, this incident occurred eight months into her tenure. In another case, after learning

that a young female defendant may have spit on and attacked deputies on the way to court, respondent made a series of inappropriate comments to a deputy, suggesting (jokingly, she claimed) that he "tase" the defendant or "punch her in the face" because she "needs a whoopin'." To a defendant charged with Disorderly Conduct for standing in the street blocking traffic, respondent stated, "I hate when people walk in front of my car. If there was [sic] no rules, I would totally run them over because it's disrespectful." Such comments are inconsistent with a judge's obligation "to be the exemplar of dignity and decorum in the courtroom" (*Matter of Caplicki*, 2008 NYSCJC Annual Report 103; Rules, §100.3[B][3]).

The Appropriate Sanction

In determining an appropriate disposition for alcohol-related driving offenses, the Commission in prior cases has considered mitigating and/or aggravating circumstances, including the level of intoxication, whether the judge's conduct caused an accident or injury, whether the conduct was an isolated instance or part of a pattern, the conduct of the judge during arrest (including whether the judge was cooperative or asserted his or her judicial position), and the judge's acceptance of responsibility for the offense and willingness to seek appropriate treatment. With one exception – *Matter of Quinn*, 54 NY2d 386 (1981) – the Commission has admonished or censured judges for such behavior.[5] In *Quinn*, a case nearly four decades ago that involved particularly

[5] *See*, *Matter of Landicino*, 2016 NYSCJC Annual Report 129 (DWI conviction; judge repeatedly asserted his judicial status during arrest [censure]); *Matter of Newman*, 2014 NYSCJC Annual Report 164 (judge convicted of Driving While Ability Impaired ["DWAI"] after rear-ending a car

egregious circumstances (judge was convicted of DWI after a prior conviction for DWAI, repeatedly asserted his judicial position and was uncooperative and abusive to law enforcement personnel), the Commission rendered a determination of removal, and while the Court of Appeals reduced that sanction to censure in view of judge's retirement and poor health, the Court underscored that the judge, who had admitted that he was suffering from the disease of alcoholism, "has demonstrated by his conduct that he is unfit to continue as a Judge" (*Id* at 392). More recently, the Commission has emphasized in several cases involving such offenses that in the wake of increasing recognition of the dangers of driving while impaired by alcohol and of the toll it exacts on society, such behavior will be regarded "with particular severity" (*e.g.*, *Matter of Maney*, *supra*; *Matter of Martineck, supra*; *Matter of Burke*, *supra*) and has stated that the Commission "will

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stopped at a traffic light; was uncooperative during his arrest and made suicidal comments [censure]); *Matter of Apple*, 2013 NYSCJC Annual Report 95 (DWI conviction, based on a BAC of .21% [censure]); *Matter of Maney*, 2011 NYSCJC Annual Report 106 (DWAI conviction; judge made an illegal U-turn to avoid a checkpoint, repeatedly identified himself as a judge and asked for "professional courtesy" [censure]); *Matter of Martineck*, 2011 NYSCJC Annual Report 116 (DWI conviction, based on a BAC of .18%, after driving erratically and hitting a mile marker [censure]); *Matter of Burke,* 2010 NYSCJC Annual Report 110 (DWAI conviction after causing a minor accident [censure, in part for additional misconduct]); *Matter of Mills*, 2006 NYSCJC Annual Report 218 (though acquitted of DWI, judge admitted operating a motor vehicle after consuming alcoholic beverages, "vehemently" protesting her arrest and making offensive statements to the arresting officers [censure]); *Matter of Pajak*, 2005 NYSCJC Annual Report 195 (DWI conviction after a property damage accident [admonition]); *Matter of Stelling*, 2003 NYSCJC Annual Report 165 (DWI conviction following a prior conviction for DWAI before he was a judge [censure]); *Matter of Burns*, 1999 NYSCJC Annual Report 83 (DWAI conviction [admonition]); *Matter of Henderson*, 1995 NYSCJC Annual Report 118 (DWAI conviction; judge referred to his judicial office during the arrest and asked, "Isn't there anything we can do?" [admonition]); *Matter of Siebert*, 1994 NYSCJC Annual Report 103 (DWAI conviction after causing a three-car accident [admonition]); *Matter of Innes*, 1985 NYSCJC Annual Report 152 (DWAI conviction; judge's car struck a patrol car while backing up [admonition]); *Matter of Barr*, 1981 NYSCJC Annual Report 139 (two alcohol-related convictions; judge asserted his judicial office and was abusive and uncooperative during his arrests, but had made "a sincere effort to rehabilitate himself" [censure]).

not hesitate to impose the sanction of removal in the future in an appropriate matter" for such behavior (*Matter of Newman, supra*).

In the instant case, respondent's conduct in connection with her conviction for DWI, standing alone, would warrant a severe sanction in view of the aggravating circumstances presented. The crash of her vehicle that caused significant damage, her hostile, profane response to the police investigation, her assertion of her judicial position during her arrest to advance her private interests and the fact that the conduct occurred as she was on her way to court to perform judicial duties are compelling factors that exacerbate her unlawful conduct in that incident. Thereafter, in the nine months that followed her sentencing for that offense, while she was still under the court's jurisdiction pursuant to her conditional discharge, respondent compounded her misconduct to an unacceptable degree by willfully engaging in behavior that resulted in two successive determinations that she violated the terms of her conditional sentence, not only endangering public safety again by attempting to operate her vehicle in an intoxicated condition but demonstrating a profound lack of respect for the very laws she is sworn to administer.

Significantly, respondent has made no argument that her conduct throughout these events was mitigated by the disease of alcoholism, asserting that she does not believe she is alcoholic and citing the evaluations of multiple professionals who concluded she is not suffering from alcohol dependency or has, at most, a "mild" alcohol disorder. *Compare, e.g., Matter of Landicino, supra*, and *Matter of Quinn, supra*. Rather, as the record demonstrates, throughout this entire period and the ensuing

disciplinary proceeding, respondent has continued to insist that she was not intoxicated at the time of her arrest and has attributed most of her behavior not to her own poor choices and poor judgment, but to various external factors and the stresses of coping with her unfair treatment by the court system and court administration and with the excessive attention of news media. Although she expressed some remorse at the oral argument, stating that "in retrospect" she "would do a lot of things differently," she repeatedly showed little or no recognition of her personal responsibility for the consequences of her actions, arguing, for example, that the trooper had no basis for arresting her, that her inappropriate behavior during her arrest was provoked by the trooper's disrespectful conduct,[6] that the judge who handled her criminal case treated her too harshly and that she was so aggrieved by her unjust conviction for DWI that she never read the document listing the terms of her conditional discharge prior to violating it. Similarly, in arguing that she did not intentionally violate her conditional discharge because it was impossible to obtain a court-ordered alcohol test or to appear in court on short notice since she was in Thailand, respondent never acknowledged that those circumstances were entirely the result of her own poor decisions. Respondent's failure to recognize and avoid impropriety and to accept responsibility for her misconduct "strongly suggests that, if [s]he is allowed to continue on the bench, we may expect more of the same" (*Matter of Bauer*, 3 NY3d 158, 165 [2004]).

[6] Although respondent has expressed regret for her combative, uncooperative conduct during her arrest and her hostile, profane statements to the trooper, she has continued to argue that her behavior is mitigated by the improper treatment she received from law enforcement personnel.

As the Court of Appeals has stated, the purpose of disciplinary proceedings is not punishment, but "protection of the public interest" and "the imposition of sanctions where necessary to safeguard the Bench from unfit incumbents" (*Matter of Seiffert*, 65 NY2d 278, 281 [1985]; *Matter of Reeves*, 63 NY2d 105, 111 [1984], quoting *Matter of Waltemade*, 37 NY2d [a], [lll] [Ct on Jud 1975]). We conclude, based on the totality of the circumstances established in the record before us[7], that respondent's behavior shows "complete insensitivity to the special ethical obligations of judges" (*Matter of Steinberg*, 51 NY2d 74, 84 [1980]), including the duty to maintain high standards of conduct at all times, both on and off the bench (Rules, §§100.1, 100.2[A]). As her conduct, viewed objectively, has irretrievably damaged public confidence in her ability to serve as a judge and has demonstrated her "manifest unfitness for judicial office" (*Matter of Quinn, supra,* 54 NY2d at 392, 395), it therefore requires the sanction of removal.

By reason of the foregoing, the Commission determines that the appropriate disposition is removal.

Mr. Belluck, Mr. Harding, Ms. Corngold, Judge Falk, Ms. Grays, Judge Leach, Judge Mazzarelli, Mr. Raskin, Mr. Stoloff and Ms. Yeboah concur.

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[7] At the hearing before the referee and during the argument before the Commission, respondent repeatedly referred to extensive media attention she has received since her arrest. In issuing this determination, we emphasize that our decision is based solely on the evidence adduced at the hearing and the arguments presented as reflected in our findings herein.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct.

Dated: April 23, 2018

Jean M. Savanyu, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct