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April 27, 2018

VIA FEDERAL EXPRESS
NEXT DAY AIR

New York State Court of Appeals
Attn: John P. Asiello, Chief Clerk
20 Eagle Street
Albany, NY 12207

RECEIVED

APR 30 2018

NYS COMMISSION ON
JUDICIAL CONDUCT - ROC

Re: In the Matter of Honorable Leticia Astacio
Rochester City Court Judge

Dear Honorable Court,

In response to the Court's letter of April 24, 2018, on behalf of Judge Astacio, I set forth further argument with regard to why her suspension should be with pay.

The Respondent Judge Astacio respectfully asserts to the Court of Appeals that the determination of the Commission of Judicial Conduct was unfair and tainted by the introduction of prejudicial material that was not part of the record.

Specifically, one Commission member stated while Judge Astacio was addressing the Commission: "Well, you started this by saying that you have respect for Mr. Postel and that he hasn't made you upset with him and that you have respect for us but you've also made comments in the public that you are not going to take any shit from the Judicial Conduct Commission and that's recent. And I don't understand how you can come before this Commission and tell the Commission that you have a level of respect for us and you appreciate our work and you are not upset with Mr. Postel, and also be making those comments." (Tr. P. 27)

Counsel then interposed an objection, and the Chair of the Commission ruled that Judge Astacio opened the door by stating that she had respect for the Commission thereby allowing commentary with regard to information that was not in the record.

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Counsel for Judge Astacio then asked for the opportunity to be provided the actual source or language of the comment referenced by the Commission member: “Well then I have a further application Mr. Belluck, respectfully. Perhaps you could identify the particular writing you are referring to at the conclusion of this proceeding and perhaps we could be further heard on it.” (Tr. P. 28)

The Chair responded: “If you would like me to do that, I would be happy to do that.” (Tr. P. 28)

Counsel then stated: “Yes”. (Tr. P. 28)

The comments made by a member of the Commission were unsupported in the record, but uttered to the entire panel. They were obviously prejudicial. No sources for the comments were ever provided. Given the extreme prejudice associated with the exchange, and the inability of Judge Astacio to be confronted with the alleged comments and respond, this Court will be confronted with a unique and prejudicial event that militates no further prejudice against Judge Astacio by suspending her salary.

We respectfully further argue that Judge Astacio’s conduct was not as extreme or severe as cases of other Judges where this Court has modified removal to censure. (See *Matter of Cunningham*, 57 NY2d 270 (1982), also *Matter of Frances Allesandro*, 13 NY3d 238 (2009), *Matter of Kiley*, 74 NY2d 364 (1989))

In light of the totality of the charges, and the prejudice that has been provoked upon Judge Astacio, it would be a further prejudice for her to be deprived of pay in the interim where other Judges in a similar circumstance were paid. (See *Matter of Cohen*, 73 NY2d 814 (1988))

While I do not represent Judge Astacio in the pending felony weapons charge that is part of this Court’s analysis of her suspension and compensation status, my client has asked me to convey the following explanation which constitutes her opinion regarding the sufficiency of those charges.

Judge Astacio opines that she has been charged with the felony of Attempted Criminal purchase “or disposal” of a weapon in violation of Penal Law Sections 110 and 265.17(1) which states in pertinent part:

A person is guilty of criminal purchase or disposal of a weapon when:

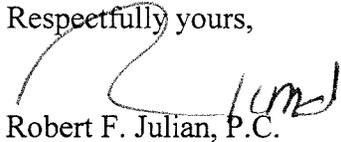
1. Knowing that he or she is prohibited by law from possessing a firearm, rifle or shotgun because of a prior conviction or because of some other disability which would render him or her ineligible to lawfully possess a firearm, rifle or shotgun in this state, such person purchases a firearm, rifle or shotgun from another person;

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Judge Astacio opines that she is not prohibited by law from possessing a weapon based on a prior conviction. She has been convicted of a misdemeanor offense which carries no such prohibition. Furthermore, Judge Astacio opines that she does not have any disability that would render her ineligible to possess a firearm, nor is any such disability alleged making the accusatory instrument defective on its face. Additionally, Judge Astacio reasons that the term disability is not defined and this ambiguity makes it impossible to know what constitutes a disability giving the impression that the statute is unconstitutional on its face. Finally, Judge Astacio opines that the case law is clear that in order for someone to be successfully prosecuted for attempt, the action in question must be nearly completed, which is not even alleged to be the case with respect to Judge Astacio's charges. There are no allegations that she filled out any paperwork, paid for any merchandise, or did anything other than asking questions of employees. Furthermore, Judge Astacio asserts that a supporting deposition indicates that she was informed that if she wanted to purchase a gun she would need to go to the Greece Dicks sporting goods to speak with the manager, and she did not, which directly negates the alleged attempt.

An Affidavit of Service of this letter upon counsel for the Commission is enclosed herein.

Respectfully yours,



Robert F. Julian, P.C.

RFJ/cmd

Enclosure

Cc: John J. Postel, Deputy Administrator (w/enc., via overnight mail & email) ✓
Robert H. Tembeckjian, Esq., Administrator & Counsel (w/enc., via overnight mail)
Hon. Leticia Astacio (via email)