STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

POST-HEARING MEMORANDUM TO REFEREE AND PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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RULES GOVERNING JUDICIAL CONDUCT

PRELIMINARY STATEMENT

This Memorandum is respectfully submitted by Counsel to the Commission on Judicial Conduct ("Commission") in support of the recommendation that the Referee adopt Counsel's proposed findings of fact and conclusions of law and determine that the Honorable Leticia D. Astacio ("Respondent") has committed judicial misconduct.

On February 13, 2016, Respondent was arrested for driving while intoxicated and related offenses. During the arrest process, she asserted her judicial office, both at the scene of her arrest and at the New York State Police barracks in an effort to dissuade the officers from arresting her. In August 2016, Respondent went to trial and was convicted of driving while intoxicated. After being sentenced to a conditional discharge, Respondent twice, in November 2016, and May 2017, was adjudicated to have violated the terms of her sentence by attempting to start and drive her car, which was equipped with an Ignition Interlock Device, after consuming alcohol, and failing to comply with the court's direction to obtain an EtG alcohol analysis and to appear in court on a date specified.

Respondent also engaged in misconduct by presiding over the arraignment of a former criminal client and failing to disqualify herself from his case notwithstanding statements by both Respondent and the defendant indicating that Respondent had a personal fondness for the defendant such that her impartiality could reasonably be questioned.

Lastly, Respondent, from the bench, repeatedly made discourteous, insensitive and undignified comments about the participants in four different criminal matters.

Respondent made remarks suggesting that the police gain control of an unruly young female defendant by "tasing," "punch[ing]," "whoopin'," and "beating" her. Respondent indicated that she found individuals who walked in the street in front of traffic to be so "annoying" that but for the legal consequences she would run them over. She made statements indicating that she presumed defendants to be guilty. Respondent repeatedly laughed in response to a defense attorney's characterization of an alleged sexual abuse victim's delayed reporting of the abuse as "buyer's remorse," and described the comment as "freakin' hilarious" and "funny,"

The evidence clearly establishes that Respondent failed to maintain high standards of conduct when she repeatedly failed to respect and comply with the law and conducted herself over and over again in a manner that detracted from the dignity of judicial office.

PROCEDURAL HISTORY

A. The Formal Written Complaint

Pursuant to Judiciary Law §44(4), the Commission authorized a Formal Written Complaint ("FWC"), dated May 30, 2017, containing five charges. Charge I alleged that on or about February 13, 2016, in Rochester, New York, Respondent operated an automobile while under the influence of alcohol (FWC ¶5).

Charge II alleged that Respondent, also on or about February 13, 2016, repeatedly asserted and/or attempted to assert her judicial office to further her private interests in connection with her arrest for driving while intoxicated ("DWI") (FWC ¶22).

Charge III alleged that on or about October 3, 2016, following her conviction for DWI, Respondent violated the terms of her conditional discharge when, in attempting to

operate her motor vehicle, she: A) provided a breath sample for her ignition interlock device ("IID") that registered a blood alcohol content ("BAC") of approximately .078%; and B) failed to perform an IID start-up re-test (FWC ¶28).

Charge IV alleged that on or about January 21, 2015, Respondent failed to disqualify herself from presiding over the arraignment in *People v James Thomas*, notwithstanding that her impartiality might reasonably be questioned because, *inter alia,* she had a prior attorney-client relationship with the defendant (FWC ¶36).

Charge V alleged that from on or about January 27, 2015, to on or about August 15, 2015, Respondent made discourteous, insensitive, and undignified comments from the bench in *People v T[redacted] L[redacted]*, *People v X[redacted] V[redacted]*, *People v D[redacted] Y[redacted]* and *People v D[redacted] W[redacted]* (FWC ¶48).

Charge VI, set forth in a Second Formal Written Complaint ("SFWC"), dated August 3, 2017, as amended by letter dated September 18, 2017, alleged that on or about May 30, 2017, Respondent violated the terms of the conditional discharge imposed in connection with her conviction for DWI (SFWC ¶6).

B. Respondent's Answer

Respondent filed a verified Answer to the Formal Written Complaint, dated June 5, 2017, and an Amended Answer ("Ans") verified on September 11, 2017.

Respondent largely denied the allegations in Charges I, II and III (Ans ¶1).

Respondent denied knowledge or information sufficient to address Charge IV (Ans ¶3), but did admit eight of the charged specifications (FWC ¶¶37-39, 42-46)

concerning her alleged failure to disqualify herself from presiding over the arraignment of *People v James Thomas* (Ans ¶2).

Respondent denied Charge V (Ans ¶1), but did admit 18 specifications to the charge concerning her alleged discourteous, insensitive, and undignified comments from the bench in *People v T* [redacted] *L* [redacted] (¶¶49-50, 52-54), *People v X* [redacted] *V* [redacted] (¶¶55-58), *People v D* [redacted] *Y* [redacted] (¶¶59-63), and *People v D* [redacted] *W* [redacted] (¶¶64-67) (Ans ¶2).

Respondent filed an Answer to the Second Formal Written Complaint ("Ans SFWC"), verified on September 11, 2017. Respondent admitted Charge VI, but denied "that the adjudication was fair and based on true or accurate information." Respondent averred, "This matter is on Appeal" (Ans SFWC ¶4).[1]

C. The Hearing

By Order dated August 15, 2017, the Commission designated Mark S. Arisohn, Esq., as Referee to hear and report findings of fact and conclusions of law. The hearing was held in Syracuse on October 17-19, 2017.

Counsel for the Commission called four witnesses and introduced 86 exhibits into evidence (Exs 1-86).[2] Respondent called two witnesses, testified on her own behalf, and introduced 16 exhibits into evidence (Resp Exs A-P).

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[1] Respondent's DWI conviction was affirmed on October 4, 2017, in a decision by Acting Monroe County Court Judge William F. Kocher. A copy of Judge Kocher's decision was admitted into evidence as Exhibit 86.

[2] "Ex" refers to the Commission exhibits, and "Resp Ex" refers to the Respondent's exhibits, introduced into evidence at the hearing before the Referee.

THE FACTS

Charge I: On or about February 13, 2016, in Rochester, New York, Respondent operated an automobile while under the influence of alcohol.

On or about February 13, 2016, Respondent drove her motor vehicle on Interstate 490 in the city of Rochester, New York, while under the influence of alcohol.

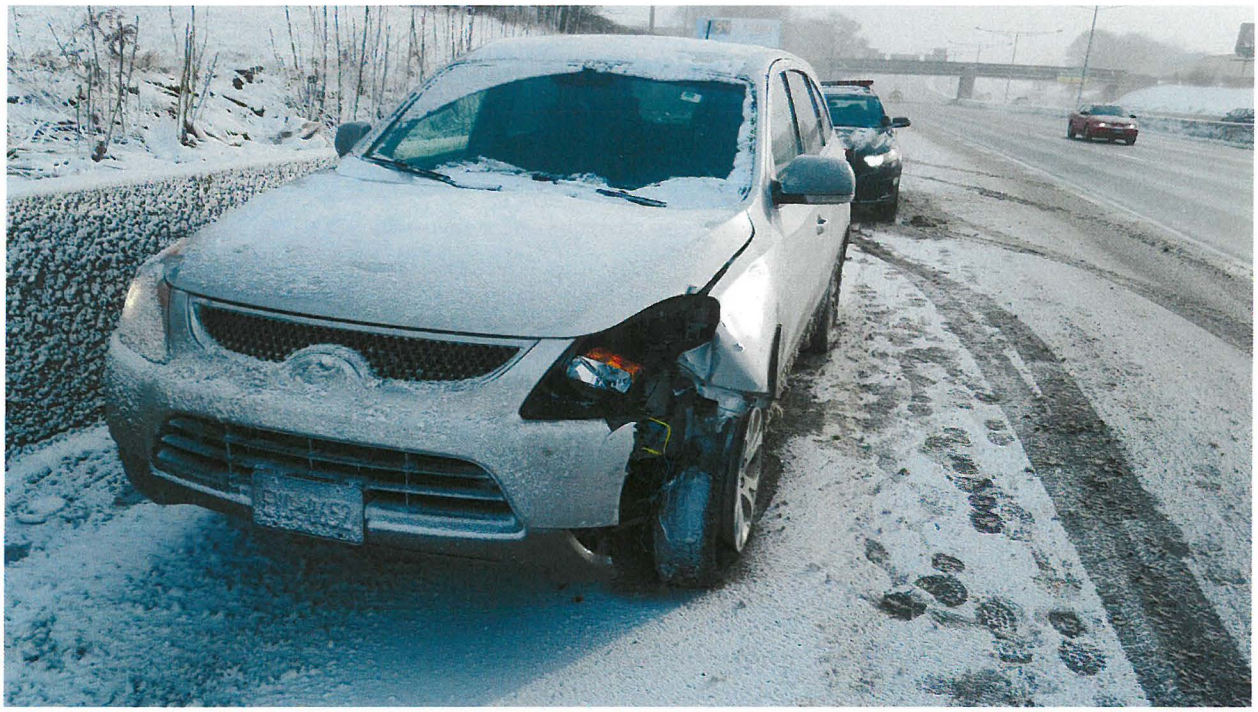
A. Respondent was arrested and charged with driving while intoxicated.

On February 13, 2016, at approximately 7:54 AM, New York State Trooper Christopher Kowalski was traveling westbound on Interstate 490 ("I-490"), west of downtown Rochester, when he observed a vehicle on the right shoulder of the road (Tr 5-7; Exs 10, 13, 25).[3] Trooper Kowalski pulled over behind the gray Hyundai (Tr 7; Ex 25). There had been a light snow that morning and the road was slightly snow-covered and wet without black ice, with approximately a half-inch of snow on the shoulder (Tr 5-6, 88, 102; Exs 10, 13, 25). It was the coldest day of the year with the 7:54 AM temperature recorded at -2.9° F, with a wind chill of -27.2° F (Tr 5; Exs 25, 30).

Respondent was the sole occupant of the car, seated in the driver's seat. The car was running and both the driver's side and passenger's side front windows were open when Trooper Kowalski approached (Tr 8; Exs 10, 25). Respondent was wearing black sneakers, black pants and a gray zip-up top; her clothes appeared disheveled (Tr 28; Ex 13). Both tires on the driver's side of the vehicle were flat, and the front tire appeared

[3] "Tr" refers to the transcript of the hearing before the Referee.

about to fall off of the rim. There was heavy front-end damage to the driver's side of the vehicle (Tr 7, 9, 12; Exs 7, 8, 10, 25):



(Exs 7, 8).

Trooper Kowalski asked Respondent if she was okay and if she had been in an accident (Tr 13; Exs 10, 25). Respondent replied that she was "fine" and stated, "I don't recall hitting anything. I just have a flat tire" (Tr 13, 17; Exs 10, 25). Trooper Kowalski then asked her to step out of her car (Tr 17). After looking at the damage to her car, Respondent provided no further explanation (Tr 18, 75; Ex 25). Respondent was unable to provide her driver's license and vehicle registration, and accompanied Trooper Kowalski to his patrol car (Tr 18; Ex 25).

Respondent sat in the back seat of the patrol car, approximately two feet behind Trooper Kowalski, who sat in the driver's seat (Tr 19; Ex 25). Trooper Kowalski, a 13-year veteran of the State Police who was trained in DWI detection and enforcement, smelled the odor of an alcoholic beverage and asked Respondent to remove the gum from her mouth (Tr 4-5, 19; Ex 25). Respondent threw the gum outside of the vehicle (Tr 19; Ex 25). Trooper Kowalski continued to smell the strong odor of an alcoholic beverage when Respondent spoke (Tr 20, 28; Ex 25). He also observed that Respondent's eyes were bloodshot, watery and glassy, and that her face was flushed (Tr 28; Exs 10, 13, 25). Trooper Kowalski asked Respondent if she had consumed any alcohol and she replied, "I've drank in my lifetime" (Tr 20; Exs 10, 13, 25).

In response to the trooper's questions, Respondent stated that she was coming from "home" and "going to City Court to do the arraignments at 9:30 this morning" (Tr 20, 21, 62, 67; Exs 10, 25). Rochester City Court was east and in the opposite direction of Respondent's westbound-facing vehicle (Tr 7; Ex 25). When Trooper Kowalski asked

what direction she was headed, Respondent stated that she was "not good with direction, east, west, north, south" (Tr 22; Exs 10, 25).

At approximately 8:15 AM, when Trooper Kowalski asked Respondent what time it was, Respondent responded, "7:15" (Tr 23; Exs 10, 25). When the trooper inquired once more whether she had consumed alcohol that morning or the night before, Respondent again responded, "I've drank in my lifetime" (Tr 23-24; Ex 25). Respondent did not respond to Trooper Kowalski's questions regarding her involvement in any accident with her vehicle (Tr 74-75; Ex 25).

When Trooper Kowalski inquired about whether Respondent had consumed alcohol that morning or the night before, Respondent stated, "I don't have to talk to you. You're making me feel uncomfortable. I don't feel comfortable in this car. I don't know if you're going to shoot me" (Tr 21, 24, 74, 76-78; Exs 10, 25). Trooper Kowalski had not displayed or unholstered his service weapon or made any type of threat (Tr 24). He was concerned about Respondent's comment and got out of the car (Tr 24). He called for backup assistance and then re-entered the patrol car and asked Respondent to refrain from making further baseless statements (Tr 24-25, 75; Ex 25).

Respondent refused Trooper Kowalski's request that she perform Standardized Field Sobriety Tests, stating that she was unable to perform them due to a brain injury related to a pregnancy (Tr 25, 67; Exs 10, 13, 25). Respondent passed the non-standardized alphabet and counting tests administered by Trooper Kowalski (Tr 26-27, 72; Exs 13, 25). Respondent told the trooper that she would not take a preliminary breath test ("PBT") to confirm the presence of alcohol on her breath without her lawyer being

present (Tr 29, 38; Ex 25). Trooper Kowalski, based upon his observations that morning and his professional expertise, believed that Respondent was intoxicated and placed her under arrest at approximately 8:43 AM (Tr 27; Ex 10, 25).

Shortly thereafter, Trooper Casey Dolan, a 21-year veteran of the State Police, appeared on the scene with a PBT device (Tr 101, 103). 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 (Tr 101-103).

Trooper Dolan passed the PBT device to Trooper Kowalski through the window (Tr 103-104). Trooper Dolan heard Respondent speaking in a raised irritated voice, and she seemed annoyed and upset (Tr 104; Ex 25). Trooper Dolan told Respondent, about the PBT, "this trooper has an obligation to ask you to submit to that. You were involved in a motor vehicle accident" (Tr 104; Exs 12, 25). Respondent replied, "No, he doesn't. He can just go mind his own fucking business" (Tr 104; Exs 12, 25).

Trooper Kowalski spoke with Respondent's attorney, Christian Catalano, who had appeared on the scene and was seated in the vehicle in front of hers, about having her submit to a PBT (Tr 38, 81-82).[4] Trooper Kowalski discussed the possibility of undoing Respondent's arrest with Mr. Catalano, and allowed him to speak privately with

[4] VTL §1194(1)(b) provides: "Every person operating a motor vehicle which has been involved in an accident or which is operated in violation of any of the provisions of this chapter, shall, at the request of a police officer, submit to a breath test to be administered by the police officer. If such test indicates that such operator has consumed alcohol, the police officer may request such operator to submit to a chemical test in the manner set forth in subdivision two of this article."

Respondent to discuss whether she would take the PBT (Tr 38-39, 56-57, 81-82). After Respondent discussed the matter with Mr. Catalano, she provided a breath sample that tested positive for the presence of alcohol on her breath (Tr 33, 82; Exs 10, 13).

B. Respondent continued being antagonistic to the arresting officer during her transport to the police barracks.

At approximately 9:23 AM, Trooper Kowalski transported Respondent to the New York State Police barracks ("SP barracks") (Tr 57-58). Trooper Kowalski did not ask Respondent any questions during the trip (Tr 35). Respondent was upset, irate, belligerent and swearing loudly during the drive (Tr 35). She repeatedly 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? I would never do this to you" (Tr 34-35; Ex 11).

C. Respondent exhibited alcohol impairment during her police processing and refused to submit to a chemical breath test.

Respondent remained irate, angry, and upset and was unruly and swearing loudly while at SP barracks (Tr 36). Lieutenant Jon Lupo,[5] the designated Acting Zone Commander on duty, heard Respondent yelling at Trooper Kowalski and noted that she sounded emotionally upset and that her speech was "slurred" (Tr 117-118). Lt. Lupo is a 30-year veteran of the New York State Police ("NYSP") who had been trained and certified as a Drug Recognition Expert by the NYSP and had administered and supervised the NYSP's Standardized Field Sobriety Testing Program between 1997 and

[5] Lt. Lupo was promoted to the position of Captain in September of 2016 (Tr 131-132).

2001 (Tr 115). Lt. Lupo introduced himself by name and position to Respondent who continued to insist that she not be put through the arrest process (Tr 118-119,121). Respondent appeared to be on an "emotional rollercoaster." She vacillated between being very upset, then being a bit composed, and then being upset again (Tr 121). Respondent used the word "fuck" multiple times (Tr 130). Lt. Lupo, standing no more than three or four feet from Respondent, observed that Respondent's eyes appeared glassy and very bloodshot, and he detected the stale smell of an alcoholic beverage that he recognized from his professional training and experience (Tr 118-119, 128). In Lt. Lupo's professional opinion, Respondent was impaired by alcohol (Tr 131).

At approximately 9:55 AM, Lt. Lupo greeted Mr. Catalano, who had arrived at SP Rochester; Mr. Catalano indicated that he was acquainted with and present for Respondent, and that he was an attorney (Tr 122-123). Lt. Lupo spoke with Trooper Kowalski and, contrary to normal protocol, Mr. Catalano was allowed to be present with Respondent during processing due to her emotional state (Tr 123).

Trooper Kowalski read DWI warnings to Respondent at 10:43 AM and 11:12 AM, after which he asked if she would submit to a chemical test to determine her blood-alcohol content. Respondent twice refused to submit to the test (Tr 43-44; Ex 14). On February 13, 2106, Trooper Kowalski issued three Uniform Traffic Tickets to Respondent: M2135BG5R7 for Driving While Intoxicated; M2135BH4F4 for No Stopping/Standing/Parking on Highway; and M2145BKXHK for Unsafe Tire (Tr 44-45; Exs 1-3).

D. Respondent was convicted after trial of driving while intoxicated.

On August 15, 2016, Canandaigua City Court Judge Stephen D. Aronson sat as an Acting Judge of Rochester City Court[6] and presided over a non-jury trial[7] on the simplified traffic informations filed pursuant to the tickets issued to Respondent by Trooper Kowalski (Tr 44-45; Exs 1-6, 25). The prosecution called Troopers Kowalski and Dolan as witnesses. Respondent, who was represented by Edward L. Fiandach, Esq., called only Mr. Catalano (Ex 25). At the conclusion of the trial, Judge Aronson reserved decision (Ex 25).

On August 22, 2016, Judge Aronson rendered his verdict finding Respondent guilty of the misdemeanor of driving while intoxicated (Vehicle and Traffic Law §1192(3)). He dismissed both traffic infractions (Exs 17, 26). Consistent with his usual practice over his 34 years on the bench (Ex 26, p 3, lines 22-25), Judge Aronson explained his verdict stating, *inter alia*:

> [T]he condition of the defendant's vehicle stopped on a major thoroughfare, part of a front bumper missing with two flat tires, all unexplained, coupled with the trooper's credible testimony of an odor of an alcoholic beverage, and coupled with the defendant's illusive, incongruous and evasive responses ... played an important role in my decision.
>
> Under the law, the demeanor, conduct and acts of a person charged with a crime is indicative of a consciousness of guilt. In going over all of the facts of the case in my mind, I took the fact that the defendant is a judge right out of the equation. I reviewed the facts backwards, forwards and sideways, and always came up with the same conclusion. There was simply no reasonable doubt. (Ex 26, p 5, lines 8-22).

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[6] Judge Aronson was assigned by a judicial assignment order of the Administrative Judge of the Seventh Judicial District, dated March 1, 2016, to hear and determine *People v Astacio* (Ex 22).

[7] Respondent signed a waiver of jury trial form on June 2, 2016 (Ex 24).

E. Respondent's testimony and evidence regarding Charge I

At the hearing, Respondent gave extensive testimony about the circumstances surrounding her arrest, corroborating many of the details previously testified to by Troopers Kowalski and Dolan and Captain Lupo. She also introduced evidence that she does not suffer from alcoholism or a substance abuse disorder.

1. Respondent's testimony about her arrest

Respondent worked as an Assistant District Attorney for the Monroe County District Attorney's Office for approximately four years during which time she worked in the DWI Bureau (Tr 229-230, 335, 361). Respondent then went into private practice, working primarily as a criminal defense attorney for three or four years (Tr 334). Respondent understood that accident-scene investigations and investigating suspected DWI incidents are part of the responsibilities of the New York State Police (Tr 338-339).

Respondent acknowledged that she was feeling sad on the evening of February 12, 2016, as the weekend marked the one year anniversary of a close cousin's murder. She was also bothered by the prospect of spending her first Valentine's Day alone since her divorce (Tr 348). As a consequence, Respondent drank wine that Friday night (Tr 348).

Respondent testified that she left her home in Rochester at approximately 7:10 AM on Saturday, February 13, 2016, intending to drive to the "West Side YMCA" to participate in an eight o'clock "Body Pump" class (Tr 238, 240, 248, 324). She confirmed that although the morning was cold and the weather was "bad" (Tr 239), she was not wearing a coat (Tr 238, 329; Ex 13). The left, front end of her vehicle was not damaged and her tires were not flat when she left her house (Tr 325).

According to Respondent, at some point while driving in the left lane on I-490, she may have "hit, like a chunk of ice, or some debris in the roadway" (Tr 240). She stopped on the shoulder of the road, and telephoned her friend, Mr. Catalano (Tr 240-241).

Respondent "dozed off for a little bit" before a trooper approached her about 20 minutes later (Tr 242). The trooper asked whether she had been in an accident and she replied: "No, I just have a flat tire" (Tr 243). Respondent was surprised by the damage to the left-front headlight and bumper of her vehicle (Tr 243).

According to Respondent, after the trooper stated he could smell alcohol, "the conversation got more hostile" or "more argumentative" (Tr 244). She confirmed that she was unable to produce her driver's license (Tr 245).

Respondent testified that she lectured the trooper about insufficient probable cause and told him in words or substance, "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" (Tr 253). Respondent asked the trooper to "call a DWI guy," giving him the names of several law enforcement officers she sought to have appear, saying, "[Y]ou're making a mistake, and it's going to have larger consequences for me than it would normally, and, I'd rather you call someone who does know what they're doing" (Tr 253).

Respondent testified that once inside the trooper's car, she told him that she doesn't drink at 7:00 AM and, after being asked when she last drank and if she drank the night before, she stated, "I've drank in my lifetime. I'm not going to have this discussion with you" (Tr 246). When the trooper later asked her when she last drank, Respondent again responded, "I've drank in my lifetime. I'm not going to do this with you" (Tr 254).

Respondent testified that she told the trooper that she was uncomfortable and fearful that he might shoot her, but conceded that she never observed the trooper place his hand on his holster or touch, draw, or point his service weapon that morning (Tr 263, 330). Respondent also testified that the trooper never made an overt threat of force to her, yelled, or used vulgarity or profanity in speaking with her (Tr 330-331).

Respondent initially refused to take a preliminary breath screening test and the trooper stated, "Well, I'm going to arrest you" (Tr 259). When a different trooper brought the PBT device to Trooper Kowalski, she did not interact with that trooper (Tr 264).[8] Respondent denied saying, "He can just go and mind his own fucking business," to Trooper Dolan at the traffic stop, claiming that she did "recall saying that" but believed she said it to Lt. Lupo while being processed at SP barracks in Rochester later in the day (Tr 265).[9]

Respondent conceded that on the ride to the SP barracks, she was "super upset" and she "totally flipped out at that point" (Tr 261). She admitted that she made all of the statements alleged by the trooper including: "I can't believe you're fucking doing this to me. You're fucking ruining my life;" "You don't have to do this. This isn't part of your

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[8] Trooper Dolan testified that Respondent was alone with Trooper Kowalski in the patrol vehicle when he brought the PBT device and when Respondent responded to him using the word "fucking" (Tr 103, 108). Mr. Catalano testified at Respondent's trial that he did not recall hearing Respondent use expletives towards the state troopers (Ex 25, pp 87-88).

[9] Captain Lupo's testimony and notes concerning his interaction with Respondent do not support Respondent's contention that these words – which she admits saying – were said to him (Tr 117-122,129-130; Ex 83).

job;" and "Why are you fucking doing this to me? I would never do this to you" (Tr 266-267, 339).

Respondent also testified that she made a variety of additional statements, including: "This is stupid;" "You're never going to get a DWI conviction here;" "You're just going to destroy my life for fun?" "There's no point in doing this;" "You don't have probable cause; you don't have enough for a conviction;" and repeatedly stating, "I'm not drunk" (Tr 261-262).

With respect to her consumption of alcohol, Respondent confirmed that she gave sworn testimony during the Commission's investigation stating that she did not consume alcohol after 10:00 PM on February 12, 2016, and that when she was approached by Trooper Kowalski on the morning of February 13, 2016, she told him that she did not consume alcohol after 10:00 PM the previous evening (Tr 323-324).

On cross-examination, however, Respondent conceded that in connection with her alcohol evaluations one of her counselors reported that "[Respondent] shared she did drink alcohol the night before, consuming 2-3 glasses of wine. She states she started at about 1030/11pm and unsure when she finished" (Tr 349; Resp Ex C).[10]

2. Respondent's witnesses testified she does not suffer from chemical dependency

Respondent's sister, Felicia Astacio, was aware of Respondent's DWI case and testified that Respondent did not drink on a regular basis (Tr 208). Referencing a one-

[10] Respondent told another therapist that she had "consumed a few glasses of wine on Thursday, and three glasses of wine on Friday night" (Tr 352).

year time period prior to Respondent's DWI charge, Ms. Astacio testified that she was with Respondent "almost every day," that she did not consider her sister to be alcohol-dependent and that Respondent did not drink daily (Tr 208-209).

On March 24, 2016, Respondent underwent a comprehensive chemical dependency evaluation performed by Elizabeth Rybczak, a Credentialed Alcoholism and Substance Abuse Counselor ("CASAC") (Resp Ex C). Ms. Rybczak staffed Respondent's case with a treatment team on March 30, 2016, and "determined that patient is not being recommended for any treatment at this time as patient does not meet the criteria for a substance use disorder" (Resp Ex C).

On November 3, 2016, Respondent attended a substance abuse intake at Strong Recovery (Resp Ex A). Her assessment included a breathalyzer and a supervised urine toxicology screen, both of which were negative. Collateral interviews with her therapist and a colleague were conducted. Based upon the information gathered, Karen Hospers, CASAC, reported a diagnostic impression of alcohol use disorder, mild (Resp Ex A). Ms. Hospers recommended that Respondent attend a 10-week relapse prevention group which she successfully completed (Resp Exs A, B).

On November 16, 2016, Respondent was evaluated by Dr. George Anstadt, through a referral from the Office of Court Administration (Resp Ex E). 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 (Resp Exs E, F).

Respondent began seeing a clinical psychologist, Vincent Ragonese, in October 2016 (Resp Ex H). In a letter dated October 9, 2017, Dr. Ragonese reported that Respondent admitted to consuming alcohol prior to pleading guilty to violating the terms and conditions of her conditional discharge and wrote that he "believe[d] that was an instance of self-medicating due to difficulty adjusting to her situation and not to alcoholism" (Resp Ex H). Dr. Ragonese further 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" (Resp H).

Charge II: On or about February 13, 2016, Respondent repeatedly asserted and/or attempted to assert her judicial office to advance her private interests in connection with her arrest.

When Trooper Kowalski approached Respondent's car on the morning of February 13, 2016, he asked her whether she had consumed alcohol and where she was headed (Tr 20-21; Exs 10, 25). In response to Trooper Kowalski's inquiry, Respondent stated, "I'm going to City Court to do the arraignments at 9:30 this morning" (Tr 21, 61-64, 67, 248, 328; Exs 10, 25). Rochester City Court was east of Respondent's location and she was traveling in a westerly direction, away from the courthouse (Tr 7; Ex 25).

After being placed under arrest for DWI, Trooper Kowalski transported Respondent to the SP barracks for processing (Tr 39; Exs 10, 11, 25). Lt. Lupo approached Respondent after observing that she was giving Trooper Kowalski difficulty (Tr 118). Lt. Lupo observed that Respondent was "insistent on … asking that she not be put through the arrest process" saying that she had arraignments later in the morning and that nobody at the court was aware that she was not going to be showing up (Tr 119). Lt.

Lupo took contemporaneous notes to document some of Respondent's statements, which included: "Please don't do this;" "I have to go to work;" "I have arraignments;" and "I have court right now" (Tr 120, 137; Ex 83).

Respondent's request to telephone the court was honored (Tr 137).

A. Respondent's hearing testimony regarding Charge II

Respondent testified that she was responding to Trooper Kowalski's question about where she was headed when she stated to him that she was "going to do arraignments ... arraignments at 9:30" (Tr 248-249, 267-268). She denied that by referencing her judicial office that she was trying to use judicial influence (Tr 250).

Respondent conceded that it was not necessary for her to mention her court in order to convey that she had business to attend to and that she could have just said that she was going to work (Tr 334). Respondent acknowledged that she could have indicated to Lt. Lupo at the barracks that she had an urgent appointment (Tr 334).

It did not occur to Respondent that her repeated references to her judicial obligations might be interpreted as indicating that she should not be arrested because of her status as a judge (Tr 334-335).

Charge III: On or about October 3, 2016, following her conviction for Driving While Intoxicated, Respondent violated the terms of her conditional discharge when she: A) provided a breath sample for her ignition interlock device (IID) that registered a blood-alcohol content (BAC) of approximately .078%; and B) failed to perform an IID start-up re-test.

On August 22, 2016, Judge Aronson sentenced Respondent to a one-year conditional discharge for her DWI conviction (Exs 26, 27; Resp Ex P). At sentencing,

Respondent was provided a copy of her "Conditions of Conditional Discharge," which she signed and dated, and which included a boldface statement near the top of the first page that Respondent was required to "**Abstain from Alcoholic Beverages and All Products That Contain Alcohol**" (emphasis in original) (Ex 27; Resp Ex P). Respondent was also required to install and maintain a functioning ignition interlock device ("IID") in any vehicle she operated and comply with all conditions of the IID (Exs 26, 27; Resp Ex P). 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 amount to a violation (Ex 27; Resp Ex P).

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 7:31 AM, with a BAC of .067% (Ex 32). On October 11, 2016, Judge Aronson signed a Declaration of Delinquency ("DOD") and arraigned Respondent on the alleged violation (Exs 31, 33, 34). At Respondent's arraignment, her attorney, Mr. Fiandach, said that she was amenable to the prosecutor's recommendation to adjourn the matter to allow her to explore and engage in appropriate treatment (Ex 34). Judge Aronson adjourned the matter until November 16, 2016 (Ex 34).

On or about October 31, 2016, the Monroe County Office of Probation again notified Judge Aronson and the District Attorney that there was reasonable cause to believe that Respondent had violated the terms of her conditional discharge (Ex 36). On November 3, 2016, Judge Aronson signed a second DOD 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% (Ex 37).

On November 16, 2016, Respondent appeared before Judge Aronson and pleaded 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% [11] BAC and thereafter failing to perform an IID start-up re-test (Exs 35, 38). Respondent's guilty plea satisfied the outstanding DOD dated October 11, 2016 (Exs 31, 35, 38). Judge Aronson amended the conditional discharge by requiring that Respondent's IID be extended for an additional period of six months and that Respondent comply with any treatment recommendations made by her therapist (Tr 38).

A. Respondent's hearing testimony regarding Charge III

Respondent testified that she was familiar with the conditional discharge form and understood that a failed test could be a violation of her conditional discharge, as Respondent had used the form when presiding over DWI cases as a Rochester City Court Judge (Tr 363-365).

Respondent testified that she had an opportunity to read the conditions of conditional discharge at the time she received them but did not do so because she was upset and "didn't really like the speech [Judge Aronson] gave" (Tr 273). Respondent

[11] Vehicle and Traffic Law §1195(2)(c) provides: "Evidence that there was .07 of one per centum or more but less than .08 of one per centum by weight of alcohol in such person's blood ... shall be given prima facie effect in determining whether the ability of such person to operate a motor vehicle was impaired by the consumption of alcohol."

acknowledged signing and dating each of the three pages of the conditional discharge form at sentencing and taking a copy home with her (Tr 273, 276; Ex 27; Resp Ex P).

Respondent testified that she consumed alcohol "more than once" between her DWI conviction on August 22, 2016, and sometime in October 2016 (Tr 277).

Respondent testified that she was drinking liquor and wine, during weekends and on other occasions, from on or about August 25, 2016, to on or about October 3, 2016 (Tr 380). Respondent testified that she was the individual pictured allegedly violating IID conditions on September 12, 2016, and October 3, 2016 (Tr 378, 381-382; Exs 32, 36). Respondent testified to knowing, prior to providing an IID breath sample on October 3, 2016, that she had consumed four glasses of wine and three shots of tequila, and that she "was drunk" and should not have been driving (Tr 368-369).

Charge IV: On or about January 21, 2015, Respondent failed to disqualify herself from presiding over the arraignment in *People v James Thomas*, notwithstanding that her impartiality might reasonably be questioned because of, *inter alia,* her prior attorney-client relationship with the defendant.

On January 21, 2015, Respondent was presiding in Part I of Rochester City Court when defendant James Thomas was brought into the courtroom to be arraigned on a petit larceny charge (Penal Law §155.25) (Exs 56, 57, 58; FWC ¶37, Ans ¶2). Respondent had represented Mr. Thomas as his defense attorney approximately three years earlier on a felony charge related to a highly-publicized jail escape involving a number of co-defendants. Respondent represented Mr. Thomas for approximately one year and had visited him approximately two dozen times at the county jail during that period. Mr.

Thomas was on parole supervision in connection with the felony when he appeared before Respondent on January 21, 2015 (Exs 56, 58; FWC ¶38, Ans ¶2).

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 she "like[d] him" and that she was going to transfer his case (Exs 56, 57, 58; FWC ¶39, Ans ¶2).

Respondent asked her court clerk, "Can it not go to [Judge Teresa] Johnson, please?" She then commented from the bench about Mr. Thomas, stating:

- "When … 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."
- "I wish, I wish … I could make him approach."

(Ex 58; FWC ¶42, Ans ¶2).

After learning from her court clerk that Mr. Thomas' case would be transferred to a judge other than Rochester City Court Judge Teresa Johnson, Respondent read Mr. Thomas the charge, and appointed counsel who entered a plea of not guilty on his behalf. Respondent advised Mr. Thomas, "It's not appropriate for me to preside over your case" (Ex 58; FWC ¶43, Ans ¶2). When Mr. Thomas asked why Respondent could not preside over his case, she replied, "I would love to preside over your case, but I don't … want any conflicts" (Ex 58; FWC ¶44, Ans ¶2).

Respondent initially indicated that she would defer to the succeeding judge with respect to setting bail, but she then set bail at $50 (Ex 58; FWC ¶45, Ans ¶2). In setting bail, Respondent stated:

- "Oh. Since, since he's being held, it really doesn't matter. I'll hold you $50 cash or bond, concurrent to the, the parole hold ...."
- "But I'll hold you, so you're getting time on these charges."

(Tr 281; Ex 58; FWC ¶45, Ans ¶2).

Mr. Thomas told Respondent that the Public Defender "was good, but you were the best," and Respondent stated, "I appreciate that, Mr. Thomas," and "I totally love him. I'm so sad that he's in jail right now" (Ex 58; FWC ¶46, Ans ¶2).

A. Respondent's hearing testimony regarding Charge IV

When Mr. Thomas was brought into her courtroom on January 21, 2015, he was smiling, waving and motioning at Respondent and she responded by laughing (Tr 280, 400; Ex 58; FWC ¶39, Ans ¶2). Respondent acknowledged having warm feelings for Mr. Thomas and feeling sympathetic towards him (Tr 274, 279, 400; FWC ¶38, Ans ¶2). Respondent understood that presiding over Mr. Thomas' case, based upon the nature of their relationship and his conduct in her court, would create the appearance of impropriety which was prohibited by the Rules Governing Judicial Conduct (Tr 280, 401-402).

Respondent testified that, typically, Mr. Thomas' case would have been transferred to Judge Johnson (Tr 281, 402-403). Respondent did not want Mr. Thomas' case transferred to Judge Johnson because she believed that Judge Johnson was not very "nice to anyone" and that Mr. Thomas would get harsher treatment and a less favorable case result from Judge Johnson (Tr 404-405).

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 (Tr 406-407). Respondent testified that she would never typically hold a defendant on a petit larceny charge unless that defendant was being held by parole; she now understands that such conduct, given her relationship with Mr. Thomas, created an appearance of impropriety (Tr 280-282).

Charge V: From on or about January 27, 2015, to on or about August 15, 2015, Respondent made discourteous, insensitive, and undignified comments from the bench in *People v T[redacted] L[redacted]*, *People v X[redacted] V[redacted]*, *People v D[redacted] Y[redacted]*, and *People v D[redacted] W[redacted]*.

While presiding over four different criminal cases, Respondent made inappropriate comments.

A. *People v T[redacted] L[redacted]*

On January 27, 2015, Respondent was scheduled to arraign T[redacted] L[redacted], who was in custody on the misdemeanor charge of criminal trespass in the third degree (Penal Law §140.10(a)) (Exs 59, 60, 63, 67; FWC ¶49, Ans ¶2). Prior to calling Ms. L[redacted]'s case, Respondent learned from her clerk that Ms. L[redacted] was allegedly biting and spitting on people and may have been cursing, kicking and punching sheriff's deputies (Tr 408; Exs 59, 60, 63, 67; FWC ¶50, Ans ¶2).

Respondent spoke from the bench with a Monroe County Sheriff's Department Deputy about Ms. L[redacted], stating, "I heard she's going crazy" (Ex 67). Respondent commented further to the deputy, remarking:

- "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'."
- "Is she crazy or is she bad?"

(Tr 283-284; Ex 67).

Respondent did not arraign Ms. L[redacted] on January 27, 2015, and held her without bail (Exs 59, 64; FWC ¶52, Ans ¶2). On January 30, 2015, Respondent arraigned Ms. L[redacted] and released her on her own recognizance (Exs 59, 65). Ms. L[redacted]'s court file noted "ROR-St. Mary's" and contained a letter from Strong Memorial Hospital in Rochester, New York, indicating that Ms. L[redacted] was admitted to the hospital on February 8, 2015 (Exs 59, 61; FWC ¶53, Ans ¶2).

On or about February 26, 2015, Respondent granted defense counsel's motion to dismiss the charges against Ms. L[redacted] (Ex 59; FWC ¶54, Ans ¶2).

B. Respondent's hearing testimony regarding T[redacted] L[redacted]

Respondent did not intend for her communication with the deputy, who had inquired about not bringing Ms. L[redacted] into the courtroom, to be recorded (Tr 283-284, 408-11; Ex 67). Respondent testified that she was joking with the deputy and trying to determine whether Ms. L[redacted] had a legitimate mental health issue, or whether she was "just being incredibly disrespectful because she hates police, and she hates everyone, and she hates the system" (Tr 285). Respondent testified she had reason to believe that Ms.

L[redacted] had mental health issues and later learned that Ms. L[redacted] was a "frequent flier" who was typically arrested for minor offenses due to her mental health issues (Tr 282, 457).

Respondent acknowledged that the deputy responded to Respondent's remark that he "tase her" by stating, "We don't have tasers in the jail" (Tr 409, 457; Ex 67). Respondent testified that "in retrospect," her comments were inappropriate, and that she did not intend to tell the deputy to actually tase or shoot a defendant she believed to be 16 years old (Tr 284-285).

Respondent believed that Ms. L[redacted] was being held on a violation (Tr 284-285, 457) and recalled that she left the bench and spoke with Ms. L[redacted], calming her down and enabling Ms. L[redacted] to come into the courtroom to be arraigned and released (Tr 285, 457).[12]

C. ***People v X[redacted] V[redacted]***

On January 28, 2015, Respondent arraigned X[redacted] V[redacted], a 16-year-old high school student, who was charged with the misdemeanor of criminal diversion of prescription medications and prescriptions in the fourth degree (Penal Law §178.10), and a violation for unlawful possession of marihuana (Penal Law §221.05) (Exs 68-74; FWC ¶55, Ans ¶2). Mr. V[redacted]'s charged conduct allegedly occurred on the grounds of the School [redacted], a Rochester public high school (Exs 69, 71).

Respondent read Mr. V[redacted] the charges against him, noted that her daughter attended the School [redacted], and then said, "[I]t's one of the best schools in the city."

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[12] Court documents show that Respondent did not arraign Ms. L[redacted] on January 27, 2015, on a class B misdemeanor charge, and that Ms. L[redacted] was held without bail (Exs 59, 64; FWC ¶52, Ans ¶2).

Respondent asked Mr. V[redacted], "I don't think you went there to peddle prescription drugs, right?" (Ex 74; FWC ¶56, Ans ¶2).

Respondent identified Mr. V[redacted]'s mother in the courtroom and thanked her for being present, commenting to Mr. V[redacted]:

> I'm sure your mom is mortified to be here with you today, and embarrassed. I would probably be beating my daughter currently, right now, while she was getting arraigned if I was her. Don't embarrass your mother, okay?

(Exs 74; FWC ¶57, Ans ¶2).

On February 17, 2015, Respondent granted Mr. V[redacted] an adjournment in contemplation of dismissal ("ACD") in accordance with Criminal Procedure Law §170.55, conditioned upon Mr. V[redacted] performing 24 hours of community service (Ex 68; FWC ¶58, Ans ¶2). On or about April 21, 2015, Respondent determined that Mr. V[redacted] had satisfied the conditions of the ACD (Ex 68; FWC ¶58, Ans ¶2).

D. Respondent's hearing testimony regarding X[redacted] V[redacted]

Respondent testified that she understood that defendants are presumed innocent at arraignment and that it is the role of law enforcement personnel, and not a judge, to develop evidence to prosecute a defendant (Tr 414). Respondent acknowledged that asking Mr. V[redacted] if he went to school to peddle drugs could have reasonably led to a conclusion that she had already made a determination concerning his guilt (Tr 417-418). Respondent testified that her question to Mr. V[redacted] was rhetorical but that Mr. V[redacted]'s response after that question and an uninterrupted second question might have been interpreted as an admission of guilt (Tr 415-416). Respondent testified that "it

depends on the defendant" whether she lectures him or her prior to a conviction for alleged conduct (Tr 417); she prefers that "children get whoopin's than arrested" (Tr 287); and she wanted to impart the potential seriousness of the charges with a "scared straight" type of lecture, as she anticipated that Mr. V[redacted]'s charges would ultimately go to Teen Court and be dismissed (Tr 287-288).

E. ***People v D[redacted] Y[redacted]***

On January 15, 2015, Respondent arraigned D[redacted] Y[redacted], who was in custody having been charged with a violation for disorderly conduct when he blocked traffic by walking in the middle of the right lane of traffic (Penal Law §240.20(5)) (Exs 75-77; FWC ¶59, Ans ¶2). Respondent read Mr. Y[redacted] the charge against him and advised counsel that Mr. Y[redacted] had other charges pending in Rochester City Court and was scheduled for a mental health examination pursuant to Criminal Procedure Law Article 730 (Exs 75-77; FWC ¶60, Ans ¶2).

Respondent told Mr. Y[redacted] that she would sentence him to time served if he pleaded guilty to the charge (Ex 77). Mr. Y[redacted]'s attorney, after conferring with him, advised Respondent that Mr. Y[redacted] would plead guilty (Exs 75, 77; FWC ¶61, Ans ¶2). Prior to accepting Mr. Y[redacted]'s plea, Respondent stated:

> Mr. Y[redacted], 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.

(Ex 77; FWC ¶62, Ans ¶2).

Respondent accepted Mr. Y[redacted]'s guilty plea and reduced his penalty assessment fee to a judgment before stating, "Good luck, sir. Stay out of the street" (Exs 75, 77; FWC ¶63, Ans ¶2).

F. Respondent's hearing testimony regarding D[redacted] Y[redacted]

Respondent testified that in retrospect she would have phrased her comments differently, stating, "I probably shouldn't reference running people over as a judge" (Tr 290).

G. *People v D[redacted] W[redacted]*

On August 15, 2015, Respondent arraigned D[redacted] W[redacted], who was charged with the misdemeanor of sexual misconduct (Penal Law §130.20(1)) (Exs 78, 79, 82; FWC ¶64, Ans ¶2). Respondent read the charge to Mr. W[redacted], explained that she was issuing an order of protection in favor of the alleged victim, and advised Mr. W[redacted] that he was to have no contact with the alleged victim. Respondent had previously signed an arrest warrant for Mr. W[redacted] in the matter and knew that Mr. W[redacted] and the alleged victim were classmates, so she clarified that Mr. W[redacted] could not interact with the alleged victim at school (Exs 78-82; FWC ¶65, Ans ¶2).

Mr. W[redacted]'s attorney referred to the alleged victim's delay in signing a statement against Mr. W[redacted] for digitally penetrating her vagina without her consent as, "buyer's remorse" (Ex 82). Respondent laughed at the comment and told the Assistant District Attorney, "That was funny. You didn't think that was funny[?]" (Exs 79, 82; FWC ¶66, Ans ¶2).

Following Mr. W[redacted]'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 didn't think it was funny."
- "She was offended, I thought it was hilarious."

(Ex 82; FWC ¶67, Ans ¶2).

H. Respondent's hearing testimony regarding D[redacted] W[redacted]

Respondent had prior information about the complaint from having reviewed an arrest warrant package and had "already made certain assessments about the case;" Respondent testified that "there wasn't bail attached to [the case]"[13] (Tr 291-292; Ex 80).

Respondent clarified that her laughter in response to the comment was unintentional (Tr 292-293). Respondent said, "When I laughed, I saw the face of my [Assistant District Attorney], who generally has an unpleasant face, that [Assistant District Attorney], but it was more unpleasant than normal. And so, I said something to her to try to smooth it over, and it just went downhill from there" (Tr 292, 426).

Respondent testified that "looking at the allegations … 'buyer's remorse' had a comical component to it" (Tr 293). Respondent acknowledged that it was not appropriate for her to respond the way she did (Tr 293).

[13] Respondent signed a warrant of arrest for Mr. W[redacted] dated 8/7/15, directing "do not issue an appearance ticket, set bail at $200" (Ex 80).

Respondent understood from her professional experience in the Domestic Violence Bureau of the District Attorney's Office that sexual assault victims are typically very hesitant to go forward out of embarrassment, or shame, or fear of becoming further victimized (Tr 291, 429). Mr. W[redacted]'s case was at the end of the docket and Respondent testified that if the purported victim or her family were there, 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" (Tr 293-294, 430).

Charge VI: On or about May 30, 2017, Respondent again violated the terms of her conditional discharge.

On August 22, 2016, after being convicted of DWI by Judge Aronson and sentenced to a one-year-conditional discharge, Respondent signed and received a copy of her "Conditions of Conditional Discharge" that provided, *inter alia*, that Respondent was to "submit to any recognized tests that are available to determine the use of alcohol or drugs" and required her to install and maintain a functioning IID in her vehicle (Ex 26; FWC ¶20, Ans ¶2; SFWC ¶¶8-9, SFWC Ans ¶¶3, 5).

On or about May 10, 2017, Assistant District Attorney ("ADA") V. Christopher Eaggleston forwarded 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 in Respondent's vehicle (Exs 42, 43).

Judge Aronson sent a letter dated May 15, 2017, to ADA Eaggleston and Respondent's attorney, Mr. Fiandach, 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 Et[G] lab analysis of her urine sample" (Ex 44). Judge Aronson directed in his letter that the test "be done **immediately**" (emphasis in original) and that the lab report be provided to the court by her counsel (Ex 44). In accordance with Judge Aronson's requirement, Rochester City Court Clerk Jody Carmel drafted a document for the Monroe County Office of Probation on May 15, 2017, confirming Respondent's ordered EtG test (Tr 152, 155-156; Ex 45).

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.**" (emphasis in original) (Tr 156; Ex 46). On Wednesday, May 24, 2017, Ms. Carmel mailed the notice to Respondent, Respondent's attorney, and ADA Eaggleston (Tr 158-160; 162-163, Exs 41, 46).

On May 30, 2017, Respondent did not appear in court (Tr 160; Ex 47). Her attorney, Mr. Fiandach, read into the record an email that he had sent to Respondent on May 26, 2017, which read:

> 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 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" (Ex 47) (emphasis added).

Judge Aronson signed a Declaration of Delinquency on that date, finding reasonable cause to believe that Respondent had violated the terms and conditions of her conditional discharge by failing to comply with his directives to submit to an EtG test or to appear in Rochester City Court on May 30, 2017 (Exs 47, 48). Also on May 30, 2017, Judge Aronson issued a bench warrant for Respondent's arrest for her failure to appear in Rochester City Court as directed (Exs 47, 49; SFWC ¶12; Ans SFWC ¶6).

On June 5, 2017, Respondent was taken into custody by Monroe County Sheriff's Office personnel pursuant to the bench warrant and was brought before Judge Aronson who ordered Respondent committed to jail pending a hearing (Ex 51; SFWC ¶13; Ans SFWC ¶1). At the beginning of the proceedings, Respondent's attorney advised the court that at the time Judge Aronson ordered the EtG test, Respondent was in Thailand on vacation (Ex 51 pp 7-8). Judge Aronson observed that Respondent "exile[d herself] from the jurisdiction of the Court without advance notice to a place halfway around the world knowing that [her] 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?" (Ex 51 pp 10-11). Judge Aronson 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" (Ex 51, pp 10-11).

On June 8, 2017, following a hearing at which Respondent testified, Judge Aronson found that Respondent had violated the terms and conditions of the conditional discharge imposed in connection with her DWI conviction, and he remanded her pending sentencing (Exs 41, 52; SFWC ¶14; Ans SFWC ¶7).[14]

On July 6, 2017, Judge Aronson sentenced Respondent to 60 days' incarceration and a three-year term of probation, which included the condition that Respondent wear a SCRAM alcohol-monitoring device for six months (Exs 53, 54; SFWC ¶1; Ans SFWC ¶8).

A. Respondent's hearing testimony regarding Charge VI

On May 1, 2017, Respondent was sad about her recent birthday and growing older, and decided "to go to Thailand and have a spiritual mecca" (Tr 305-306, 386). Respondent purchased a one-way ticket and left for Thailand the following day; she intended to stay for several months until sometime in August 2017 (Tr 387; Ex 52).

Respondent understood prior to traveling that she was subject to being required to submit to alcohol testing as a condition of her conditional discharge (Tr 315-316). Respondent also understood before she left that there had been a "positive blow into the IID on April 9, 2017, that resulted in a vehicle lock-out and shut-down that required servicing to make the vehicle operational (Tr 306-307).

[14] Pursuant to a December 19, 2017 telephone conference, Respondent's Counsel and Commission Counsel stipulated that a December 8, 2017 decision from Monroe County Court affirmed a finding that Respondent violated the terms of her conditional discharge. The Referee will not consider the decision on Respondent's appeal in arriving at his findings of fact and conclusions of law.

Prior to leaving the country, Respondent did not notify her Administrative Judge, Craig Doran, or her attorney, Mr. Fiandach, that she planned on traveling to Southeast Asia for 3 - 4 months (Tr 387-388). Respondent failed to notify the Monroe County Office of Probation of her planned extended absence, notwithstanding that she was required to notify the probation office "prior to any change in address" (Tr 390-392; Ex 27; Resp Ex P).

On May 7, 2017, Respondent called Mr. Fiandach in response to his email advising her of a "bad blow" on her IID; Respondent believed this to relate to the April 9th incident (Tr 309). Mr. Fiandach communicated his belief that the ADA and probation were not recommending that Judge Aronson violate her for the IID incident (Tr 309). Respondent informed Mr. Fiandach that she did not plan to return home until August and she thereafter went "to live … in a wat, with monks" (Tr 309). Respondent changed her telephone service from Verizon to a Thai system, DTAC, but did not advise Mr. Fiandach of her change in carrier (Tr 388).

Respondent testified that, from Thailand on May 27, 2017, at approximately 3:30 AM (4:30 PM Eastern Standard Time on May 26, 2017, in Rochester),[15] she responded by email to an email from Mr. Fiandach (Tr 309-310, 392). Mr. Fiandach informed her that she had to appear in court in four days or get an EtG test in Thailand (Tr 311, 392). Respondent communicated to Mr. Fiandach that she believed there was a jurisdictional defect with her conditional discharge and that it was "all moot anyway" with respect to

[15] Respondent testified that Thailand is in a time zone 11 hours ahead of Eastern Standard Time (Tr 393).

the judge's requirements (Tr 311). Respondent told Mr. Fiandach that she did not have sufficient time to either get an EtG test done in Thailand or travel home and asked him to request an adjournment of her case (Tr 311).

Respondent, although unable to speak by telephone, was in "constant communication" with Mr. Fiandach by email and Google Voice and learned that Judge Aronson had issued a bench warrant on May 30, 2017, when she had failed to appear in court (Tr 393; Exs 47, 49). Respondent never checked a single, specific airline for a return trip and testified that she is unaware of the availability of daily flights from Bangkok to New York for such international airlines as Air Canada, Delta Airlines, Japan Air, Korean Air, Nippon Airlines, Turkish Air, and United Airlines (Tr 398-399).

Respondent left Thailand on June 3, 2017, and arrived in Rochester, New York, on June 4, 2017 (Tr 396, 463). She failed to surrender herself on her known outstanding bench warrant upon arriving (Tr 463). The following day, June 5, 2017, Respondent was arrested on her bench warrant and transported to the booking area of the county jail before being brought into a courtroom before Judge Aronson (Tr 314; Exs 49, 51).

Respondent testified that had she known the outcome of this matter, she "would've just called or emailed [Mr. Fiandach] before May 15th, I think, was the day that this all came together, I would have stayed in Thailand until August" (Tr 317).

ARGUMENT

POINT I

RESPONDENT COMMITED JUDICIAL MISCONDUCT WHEN SHE OPERATED HER MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL.

"A judge who drives while his ability to do so is impaired by alcohol consumption violates the law and endangers the public welfare." *Matter of Siebert,* 1994 Ann Rep 103, 104 (Commn on Jud Conduct, January 27, 1993).[16] The Commission has consistently disciplined judges who have operated a motor vehicle while under the influence of alcohol. *See Matter of Landicino,* 2016 Ann Rep 129 (Commn on Jud Conduct, December 28, 2016); *Matter of Newman,* 2014 Ann Rep 164 (Commn on Jud Conduct, December 18, 2013); *Matter of Apple,* 2013 Ann Rep 95 (Commn on Jud Conduct, January 31, 2012); *Matter of Martineck,* 2011 Ann Rep 116 (Commn on Jud Conduct, October 12, 2010); *Matter of Maney,* 2011 Ann Rep 106 (Commn on Jud Conduct, December 20, 2010); *Matter of Burke,* 2010 Ann Rep 110 (Commn on Jud Conduct, December 15, 2009); *Matter of Pajak,* 2005 Ann Rep 195 (Commn on Jud Conduct, October 6, 2004); *Matter of Stelling,* 2003 Ann Rep 165 (Commn on Jud Conduct, October 1, 2002).

As the Commission held in *Matter of Maney*:

> In the wake of increased recognition of the dangers of Driving While Intoxicated and the toll it exacts on society, alcohol-related driving offenses must be regarded with particular severity.

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[16] Commission determinations are available online at www.cjc.ny.gov.

Matter of Maney, 2011 Ann Rep at 110. *See also Matter of Newman,* 2014 Ann Rep at 170; *Matter of Mills*, 2006 Ann Rep 218, 220 (Commn on Jud Conduct, August 17, 2005).

There was clear and convincing evidence that Respondent operated her vehicle on February 13, 2016, while under the influence of alcohol. In particular, the evidence showed:

- Respondent was sad and depressed the prior evening because of serious personal issues, and she consumed alcohol as a consequence;[17] drinking three glasses of wine as late as 11:00 PM[18] (Tr 296, 343, 347-348, 350, 352; Resp Ex C).
- On the morning of her DWI arrest, Respondent drove from her home in sub-zero temperatures wearing sneakers and a shirt and hoodie, but no coat (Tr 238, 329; Exs 13, 30).
- Respondent's vehicle sustained extensive physical damage to the front fender and tires, indicative of a significant collision while she was driving, yet she denied to Trooper Kowalski even knowing her car had been damaged beyond a flat tire (Tr 12, 240; Exs 7, 8, 10, 25).

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[17] Dr. Anstadt, who evaluated Respondent in November 2016 in connection with her fitness for judicial duty, wrote that the DWI charge followed upon Respondent experiencing "a constellation of adverse events occurring simultaneously, causing her to resort to too much alcohol" (Resp Ex E).

[18] Respondent acknowledged testifying during the Commission's investigation that she had nothing to drink after 10:00 PM on February 12, 2017, and that she told Trooper Kowalski that she had nothing to drink after 10:00 PM on February 12, 2017 (Tr 324). Respondent also acknowledged that she told Mr. Catalano that she had nothing to drink on the night of February 12, 2017 (Tr 435-436, 448-449).

- After pulling her vehicle to the side of the road, Respondent "dozed off" (Tr 242).
- Both front windows of Respondent's vehicle were down when law enforcement approached and she was chewing gum (Tr 8, 19, 246-247, 258, 328, 439; Ex 25).[19]
- Trooper Kowalski smelled the strong odor of an alcoholic beverage on Respondents breath even after she had removed gum from her mouth (Tr 19-20; Ex 25).
- Trooper Kowalski observed that Respondent's eyes were bloodshot, watery and glassy, and her face was flushed (Tr 28; Exs 10, 13, 25).
- Respondent replied evasively to Trooper Kowalski's question about whether she had consumed alcohol by stating, "I've drank in my lifetime" (Tr 20; Exs 10, 13, 25).
- In response to a subsequent inquiry by Trooper Kowalski about whether she had consumed alcohol that morning or the night before, Respondent stated, "I don't have to talk to you. You're making me feel uncomfortable. I don't feel comfortable in this car. I don't know if you're going to shoot me" (Tr 21, 24, 74, 76-78; Exs 10, 25).

[19] Airing out her car on the coldest day of the year and scenting her breath was particularly telling conduct by someone experienced with prosecuting and defending DWI's as each of those acts are known to be commonly employed by individuals attempting to diminish and cover up the odor of an alcoholic beverage.

- Respondent replied to Trooper Kowalski's question about what direction she was traveling by stating she was "not good with direction, east, west, north, south" (Tr 22; Exs 10, 25).
- Respondent registered a positive result for alcohol on her breath on the PBT device (Tr 33, 82; Exs 10, 13).
- While observing Respondent and interacting with her at the police barracks, Lt. Lupo observed that Respondent's eyes appeared glassy and very bloodshot, her breath smelled stale and of an alcoholic beverage, and she exhibited an "emotional rollercoaster" demeanor (Tr 118-119, 128, 131).
- Two highly-experienced New York State Troopers with extensive experience in DWI enforcement – including Lt. Lupo, who was trained as a Drug Recognition Expert and administered and supervised the New York State Police's Standardized Field Sobriety Testing Program – both formed the professional opinion that Respondent was impaired by alcohol (Tr 17, 26-27, 115, 131; Exs 1, 10, 14, 15, 25).
- Incidental to her arrest and processing, and over the better part of three hours, Respondent engaged in a variety of inappropriately aggressive, confrontational, insulting and rude behavior towards a law enforcement officer who she understood to be performing his lawful duty (Tr 338-339).

Taken as a whole, the evidence establishes that Respondent operated her vehicle under the influence of alcohol. By doing so, Respondent violated the Rules Governing Judicial Conduct ("Rules") which require that a judge respect and comply with the law,

and conduct her extra-judicial affairs so as not to detract from the dignity of judicial office. Rules 100.2(A); 100.4(A)(2).

POINT II

RESPONDENT COMMITTED JUDICIAL MISCONDUCT WHEN SHE REPEATEDLY ASSERTED THE PRESTIGE OF HER JUDICIAL POSITION TO ADVANCE HER OWN PRIVATE INTERESTS DURING HER ENCOUNTER WITH LAW ENFORCEMENT PERSONNEL.

A judge is prohibited from lending the prestige of judicial office to advance the judge's own interests. Rule 100.2(C); *See also Matter of Landicino*, 2016 Ann Rep at 139-141; *Matter of Maney*, 2011 Ann Rep at 110.

Where, as here, a judge references her judicial status in connection with a personal matter, the Court of Appeals and the Commission have interpreted such conduct as an implicit request for special treatment and a violation of the Rules. *See Matter of Edwards,* 67 NY2d 153, 155 (1986); *Matter of Lonschein,* 50 NY2d 569, 572 (1980); *Matter of Hurley,* 2008 Ann Rep 141, 143 (Commn on Jud Conduct, March 16, 2007); *Matter of Dumar,* 2005 Ann Rep 151-152 (Commn on Jud Conduct, May 18, 2004); *Matter of Barr*, 1981 Ann Rep 139, 142 (Commn on Jud Conduct, October 3, 1980).

At approximately 8:00 AM on February 13, 2016, Respondent had been traveling in a westerly direction to the "West Side YMCA" on Elmgrove Road when she pulled off onto the right shoulder. A short time later, Trooper Kowalski stopped behind Respondent's car, approached, and asked her where she was headed (Tr 240; Exs 10, 13). Respondent did not provide a direct response to his simple question of where she was going. Instead, Respondent advised Trooper Kowalski of what she was scheduled to be

doing later that morning and told him of her judicial status by stating, "I'm going to City Court to do the arraignments at 9:30 this morning" (Tr 21, 62, 67; Exs 10, 25). The clear and reasonable interpretation of Respondent's reply was that she wanted to advise the trooper that she was a judge. Indeed, that is how Trooper Kowalski understood her statement (Tr 63).

Respondent's pleas *en route* to the police barracks – including "I can't believe you're doing this to me;" "You don't have to do this;" and "I would never do this to you" – voiced after having advised the trooper of her judicial office, imply a request that the trooper should provide her favorable treatment, as she would act likewise given a similar opportunity (Tr 34-35; Ex 11).

Later that morning during her processing at the SP barracks, Respondent repeatedly made statements advising the troopers of her judicial status in the context of seeking accommodations (Tr 119). Respondent's statements included: "Please don't do this;" "I have to go to work;" "I have arraignments;" and "I have court right now" (Tr 120, 137; Ex 83).

"The absence of a specific request for favorable treatment or special consideration is irrelevant." *Matter of Edwards,* 67 NY2d 153, 155 (1986). Respondent's conduct violated Rule 100.2(C), which prohibits a judge from lending the prestige of judicial office to advance the judge's personal interests.

POINT III

RESPONDENT COMMITTED JUDICIAL MISCONDUCT WHEN SHE TWICE VIOLATED THE TERMS AND CONDITIONS OF HER CONDITIONAL SENTENCE.

As the Court of Appeals has held, every judge, even off the bench, must observe "standards of conduct on a plane much higher than those of society as a whole ... so that the integrity and independence of the judiciary will be preserved" and, "[a] Judge must conduct his everyday affairs in a manner beyond reproach" *Matter of Kuehnel*, 49 NY2d 445, 469 (1980). Respondent failed to meet those standards by repeatedly failing in 2016 and 2017 to respect and comply with her DWI sentence conditions.

Respondent, with years of criminal law experience as a prosecutor, defense attorney and judge, clearly understood that as a consequence of her DWI conviction, she was required to abide by the conditional discharge sentence imposed by Judge Aronson on August 22, 2017. Respondent was familiar with the three-page "Conditions of Conditional Discharge" ("CCD form") that she received at sentencing, having used the form herself while presiding on the bench (Tr 363-365). Respondent signed and dated each page of CCD form in the courtroom and took a copy home with her (Tr 276). Set prominently near the top of the first page was the first bulleted and bolded condition that read: **"Abstain from Alcoholic Beverages and All Products That Contain Alcohol"** (Ex 27; Resp Ex P).

Prior to Respondent receiving the CCD form at sentencing, Judge Aronson had ordered her from the bench to "comply with ignition interlock device requirements" (Ex 26). The CCD form specified six violations of an ignition interlock device ("IID") under

a bold and capitalized heading on page three that read: "**VIOLATIONS OF THIS IID CONDITIONAL DISCHARGE CAN INCLUDE THE FOLLOWING.**" Bullet points numbered four and five, respectively, under that heading advised that a violation would occur if "a Device reports a Lock-Out mode, a failed start-up, missed re-test or failed rolling test" and "a Device indicates a failed test or re-test where the BAC was .05% or higher" (Ex 27; Resp Ex P).

Notwithstanding that these conditions were clearly set forth in the CCD form, Respondent, within days of her sentencing, began drinking liquor and wine (Tr 380). On September 12, 2016, she was captured in a photograph blowing into the IID installed on her vehicle and recorded a BAC of .067% (Ex 32). Then on October 3, 2016, after consuming four glasses of wine and three shots of tequila, and knowing she was "drunk," Respondent was captured in a photograph blowing into her vehicle's IID and recorded a BAC of .078% (Tr 368-369, 378, 381-382; Ex 36). On November 16, 2016, Respondent pleaded guilty to attempting to start and operate her vehicle on October 3rd with a .078% BAC and thereafter failing to perform an IID start-up re-test to satisfy her outstanding alleged violations (Ex 31, 35, 38).

Subsequently, on May 2, 2017, Respondent embarked on trip to Thailand where she intended to stay for three or four months (Tr 305-306, 387). Respondent understood that as a person convicted both of a misdemeanor and of a violation of her sentence, she was still under the authority of the court and was subject to random testing for alcohol use (Tr 315-316; Ex 27; Resp Ex P).

Respondent departed for Thailand knowing there had been another issue with an IID lockout of her car, which constituted a violation pursuant to the written provisions of the CCD form. Respondent set off on her extended journey on short notice – the very next day after she decided to leave – without notifying the probation department of her change of location (Ex 27; Resp Ex P). Respondent departed without informing her administrative judge or her attorney of her planned extended absence and without ensuring that she was available for communication regarding her compliance with court mandated conditions throughout her absence (Tr 387-388).

Despite receiving notice from her lawyer by cell, email and texts, Respondent did not obtain EtG testing as ordered by Judge Aronson or make travel plans to timely appear in court on a date specified. Instead, Respondent took no action upon learning of the judge's direction. Respondent waited nine days to return home after learning of her scheduled court appearance and knowingly failed to surrender herself on an outstanding warrant when she returned. She willfully ignored the warrant and went home (Tr 463).

After a hearing at which she testified, Respondent was found to have violated the conditions of her conditional discharge. She was sentenced to 60 days in jail and a three-year term of probation which included as a condition that she wear a SCRAM alcohol monitoring device for six months (Exs 41, 52, 54, 55)

Respondent's repeated violations of her conditional discharge evidenced an unwillingness to follow judicial orders and to respect and comply with the law as required by Section 100.2(A) of the Rules.

POINT IV

RESPONDENT COMMITTED JUDICIAL MISCONDUCT WHEN SHE FAILED TO TIMELY RECUSE HERSELF AND PRESIDED OVER THE ARRAIGNMENT OF A FORMER CLIENT.

Every judge has "a duty to conduct himself in such a manner as to inspire public confidence in the integrity, fair-mindedness and impartiality of the judiciary." *Matter of Esworthy*, 77 NY2d 280, 282 (1991). *See Matter of Cohen*, 74 NY2d 272, 278 (1989). Respondent did not live up to that duty and acted in violation of Section 100.3(E)(1)(a)(i) of the Rules, as her impartiality was reasonably subject to question due to her favorable bias toward her former client, James Thomas, when she presided over his arraignment.

When Mr. Thomas came into her courtroom smiling and waving and motioning to her on January 21, 2015, Respondent laughed – she understood immediately that presiding in his case would create the appearance of impropriety (Tr 280, 401-401; Ex 58 p1). It was obvious to observers in the courtroom by words and actions that Respondent's impartiality might be reasonably questioned due to her apparent and favorable feelings towards Mr. Thomas. Respondent herself recognized her obligation to disqualify herself and she stated that she was going to transfer Mr. Thomas' case (Ex 58). Respondent stated, "It's not appropriate for me to preside over your case" and "I don't want any conflicts" (Ex 58, pp 4-5).

Notwithstanding her known obligation, Respondent did not immediately and properly recuse herself from presiding over Mr. Thomas' arraignment. Believing that Mr. Thomas' case would be transferred to Judge Johnson, Respondent intervened on his behalf and asked her clerk that the case "not go to Johnson, please," as Respondent

believed that Judge Johnson was not "very nice to anyone" and that Mr. Thomas would get harsher treatment and a less favorable case result from appearing before Judge Johnson (Tr 404-405; Ex 58, p 2).

Respondent presided over his case; she read the charges to Mr. Thomas and then exercised her judicial discretion by appointing Mr. Thomas an attorney (Tr 405; Exs 56, 58). After initially saying she would leave the bail determination to the next judge, Respondent honored Mr. Thomas' attorney's request and, again exercising her judicial discretion, set $50 bail in order to provide Mr. Thomas the benefit of receiving jail time credit on his current charge (Tr 406-407; Exs 56, 58).

"If, as respondent has acknowledged, [her] ... relationship with the [defendant] ... required [her] disqualification ..., [she] should not have handled" the bail determination. *Matter of LaBombard,* 2008 Ann Rep 151, 157 (Commn on Jud Conduct, December 12, 2007). By setting Mr. Thomas' bail while he was being held on another charge – a judicial act which had no consequence other than to benefit Mr. Thomas – Respondent "created the appearance of favoritism" and "seriously exacerbated" her misconduct. *Id.*

POINT V

RESPONDENT COMMITTED JUDICIAL MISCONDUCT WHEN SHE MADE DISCOURTEOUS, INSENSTIVE, AND UNDIGNIFIED COMMENTS FROM THE BENCH WHILE PRESIDING IN FOUR CRIMINAL MATTERS.

Every judge is required to "act in a manner that promotes public confidence in the integrity and impartiality of the judiciary" and to be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity. Rules 100.2(A); 100.3(B)(3). Respondent failed, repeatedly, to adhere to those

Rules while presiding over *T* [redacted] *L* [redacted], *X* [redacted] *V* [redacted], *D* [redacted] *Y* [redacted], and *D* [redacted] *W* [redacted].

In *People v T* [redacted] *L* [redacted], Respondent had reason to believe that the young female defendant, who was engaging in obstreperous behavior towards sheriff's deputies, might be suffering from mental illness (Tr 457; Ex 67). However, notwithstanding that known possibility, Respondent made remarks that the sheriff's deputies should "punch her in the face," "tase her," "shoot her," and strike her with a billy-club. Respondent "didn't like [Ms. L[redacted]'s] attitude" and said that she "needs a whoopin'" (Ex 67).

In *People v X* [redacted] *V* [redacted], Respondent's words created the appearance that she had prejudged the teenage defendant's case and that she was attempting to elicit incriminatory evidence. Respondent asked Mr. V[redacted], "I don't think you went there to peddle prescription drugs, right?" (Exs 69, 70). That question failed to comply with the fundamental principle that every person with a legal interest in a case has a right to have the matter heard before a judge who both is, and appears to be, impartial. *See Matter of Herder,* 2005 Ann Rep 169 (Commn on Jud Conduct, August 16, 2004).

Subsequently, with Mr. V[redacted]'s mother standing nearby, Respondent expressed that had her own child been similarly charged, she would "probably be beating my [child] currently, right now, while [my child] was getting arraigned," because of the embarrassment that it would cause her (Ex 74).

Respondent continued to express her personal preference in using or resorting to physical violence while presiding in *People v D* [redacted] *Y* [redacted]. Mr. Y[redacted] was charged with disorderly conduct for walking in the middle of the street obstructing traffic. From

the bench, Respondent lamented that but for the legal consequences, she "would totally run over" people who "walk in front of my car" because she found it "super annoying" and "disrespectful" (Ex 77).

In presiding over *People v D[redacted] W[redacted]*, Respondent did not remain dignified and act with appropriate decorum when she laughed at a defense attorney's patently offensive remark which demeaned and denigrated an alleged sexual assault victim. She well understood from her professional experience as a prosecutor in the Domestic Violence Bureau that sexual abuse victims are often hesitant to go forward out of embarrassment, shame, or fear of becoming further victimized (Tr 429). Despite her knowledge of the seriousness of the allegations and of the emotional vulnerability of alleged sexual assault victims, Respondent repeatedly revisited the inappropriate remark and sought confirmation from the obviously disturbed prosecutor that her inappropriate response was justified (Tr 292, 426; Ex 82).

As the Commission has set forth, "A judge is obliged to be the exemplar of dignity and decorum in the courtroom and to treat those who appear in the court with courtesy and respect." *Matter of Caplicki,* 2008 Ann Rep 103, 105 (Commn on Judicial Conduct, September 26, 2007). Respondent failed, repeatedly, in her obligation while presiding in the matters of Ms. L[redacted], Mr. V[redacted], Mr. Y[redacted] and Mr. W[redacted].

CONCLUSION

Counsel for the Commission respectfully requests that the Referee adopt the proposed findings of fact and conclusions of law enumerated in Appendix A to the Memorandum and find that Charges I - V of the Formal Written Complaint and Charge VI of the Second Formal Written Complaint are sustained.

Dated: January 26, 2018
Rochester, New York

Respectfully submitted,

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APPENDIX A

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent was admitted to the practice of law in New York in 2007. She has been a Judge of the Rochester City Court, Monroe County, since January 1, 2015. Respondent's current term expires on December 31, 2024 (FWC ¶4; Ans ¶1).

2. Respondent worked as an Assistant District Attorney for the Monroe County District Attorney's Office for approximately four years during which time she worked in the DWI Bureau (Tr 229-230, 335, 361). Respondent then went into private practice, working primarily as a criminal defense attorney for three or four years (Tr 334). Respondent understood that accident-scene investigations and investigating suspected DWI incidents are part of the responsibilities of the New York State Police (Tr 338-339).

PROPOSED FINDINGS OF FACT AS TO CHARGE I

3. On February 13, 2016, at approximately 7:54 AM, New York State Trooper Christopher Kowalski was traveling westbound on Interstate 490, west of downtown Rochester, when he observed a vehicle on the right shoulder of the road (Tr 5-7; Exs 10, 13, 25). Trooper Kowalski pulled over behind the gray Hyundai (Tr 7; Ex 25).

4. There had been a light snow that morning and the road was slightly snow-covered and wet without black ice, with approximately a half-inch of snow on the shoulder (Tr 5-6, 88, 102; Exs 10, 13, 25). It was the coldest day of the year with the 7:54 AM temperature recorded at -2.9° F, with a wind chill of -27.2° F (Tr 5; Exs 25, 30).

5. Respondent was the sole occupant of the car, seated in the driver's seat. The car was running and both the driver's side and passenger's side front windows were open when Trooper Kowalski approached (Tr 8; Exs 10, 25). Respondent was wearing black sneakers, black pants and a gray zip-up top; her clothes appeared disheveled (Tr 28; Ex 13).

6. Both tires on the driver's side of the vehicle were flat, and the front tire appeared about to fall off of the rim. There was heavy front-end damage to the driver's side of the vehicle (Tr 7, 9, 12; Exs 7, 8, 10, 25):

7. Trooper Kowalski asked Respondent if she was okay and if she had been in an accident (Tr 13; Exs 10, 25). Respondent replied that she was "fine" and stated, "I don't recall hitting anything. I just have a flat tire" (Tr 13, 17; Exs 10, 25).

8. Trooper Kowalski asked Respondent to step out of her car (Tr 17). After looking at the damage to her car, Respondent provided no further explanation (Tr 18, 75; Ex 25).

9. Respondent was unable to provide her driver's license and vehicle registration, and accompanied Trooper Kowalski to his patrol car (Tr 18; Ex 25).

10. Respondent sat in the back seat of the patrol car, approximately two feet behind Trooper Kowalski, who sat in the driver's seat (Tr 19; Ex 25). Trooper Kowalski, a 13-year veteran of the State Police who was trained in DWI detection and enforcement, smelled the odor of an alcoholic beverage and asked Respondent to remove the gum from her mouth (Tr 4-5, 19; Ex 25).

11. After Respondent threw the gum outside of the vehicle (Tr 19; Ex 25), Trooper Kowalski continued to smell the strong odor of an alcoholic beverage when Respondent spoke (Tr 20, 28; Ex 25). He also observed that Respondent's eyes were bloodshot, watery and glassy, and that her face was flushed (Tr 28; Exs 10, 13, 25).

12. Trooper Kowalski asked Respondent if she had consumed any alcohol and she replied, "I've drank in my lifetime" (Tr 20; Exs 10, 13, 25).

13. In response to the trooper's questions, Respondent stated that she was coming from "home" and "going to City Court to do the arraignments at 9:30 this morning" (Tr 20, 21, 62, 67; Exs 10, 25).

14. Rochester City Court was east and in the opposite direction of Respondent's westbound-facing vehicle (Tr 7; Ex 25). When Trooper Kowalski asked what direction she was headed, Respondent stated that she was "not good with direction, east, west, north, south" (Tr 22; Exs 10, 25).

15. At approximately 8:15 AM, when Trooper Kowalski asked Respondent what time it was, Respondent responded, "7:15" (Tr 23; Exs 10, 25). When the trooper inquired once more whether she had consumed alcohol that morning or the night before, Respondent again responded, "I've drank in my lifetime" (Tr 23-24; Ex 25).

16. Respondent did not respond to Trooper Kowalski's questions regarding her involvement in any accident with her vehicle (Tr 74-75; Ex 25).

17. When Trooper Kowalski inquired about whether Respondent had consumed alcohol that morning or the night before, Respondent stated, "I don't have to talk to you.

You're making me feel uncomfortable. I don't feel comfortable in this car. I don't know if you're going to shoot me" (Tr 21, 24, 74, 76-78; Exs 10, 25).

18. Trooper Kowalski had not displayed or unholstered his service weapon or made any type of threat (Tr 24). He was concerned about Respondent's comment and got out of the car (Tr 24). He called for backup assistance and then re-entered the patrol car and asked Respondent to refrain from making further baseless statements (Tr 24-25, 75; Ex 25).

19. Respondent refused Trooper Kowalski's request that she perform Standardized Field Sobriety Tests, stating that she was unable to perform them due to a brain injury related to a pregnancy (Tr 25, 67; Exs 10, 13, 25). Respondent passed the non-standardized alphabet and counting tests administered by Trooper Kowalski (Tr 26-27, 72; Exs 13, 25).

20. Respondent told the trooper that she would not take a preliminary breath test to confirm the presence of alcohol on her breath without her lawyer being present (Tr 29, 38; Ex 25).

21. Trooper Kowalski, based upon his observations that morning and his professional expertise, believed that Respondent was intoxicated and placed her under arrest at approximately 8:43 AM (Tr 27; Ex 10, 25).

22. Trooper Casey Dolan, a 21-year veteran of the State Police, appeared on the scene with a PBT device (Tr 101, 103). 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 (Tr 101-103).

23. Trooper Dolan passed the PBT device to Trooper Kowalski through the window (Tr 103-104). Trooper Dolan heard Respondent speaking in a raised irritated voice, and she seemed annoyed and upset (Tr 104; Ex 25).

24. Trooper Dolan told Respondent, about the PBT, "this trooper has an obligation to ask you to submit to that. You were involved in a motor vehicle accident" (Tr 104; Exs 12, 25). Respondent replied, "No, he doesn't. He can just go mind his own fucking business" (Tr 104; Exs 12, 25).

25. Trooper Kowalski spoke with Respondent's attorney, Christian Catalano, who had appeared on the scene and was seated in the vehicle in front of hers, about having her submit to a PBT (Tr 38, 81-82). Trooper Kowalski discussed the possibility of undoing Respondent's arrest with Mr. Catalano, and allowed him to speak privately with Respondent to discuss whether she would take the PBT (Tr 38-39, 56-57, 81-82).

26. After Respondent discussed taking the PBT with Mr. Catalano, she provided a breath sample that tested positive for the presence of alcohol on her breath (Tr 33, 82; Exs 10, 13).

27. At approximately 9:23 AM, Trooper Kowalski transported Respondent to the New York State Police barracks (Tr 57-58). Trooper Kowalski did not ask Respondent any questions during the trip (Tr 35).

28. Respondent was upset, irate, belligerent and swearing loudly during the drive (Tr 35). She repeatedly 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? I would never do this to you" (Tr 34-35; Ex 11).

29. Respondent remained irate, angry, and upset and was unruly and swearing loudly while at SP barracks (Tr 36). Lieutenant Jon Lupo, the designated Acting Zone Commander on duty, heard Respondent yelling at Trooper Kowalski and noted that she sounded emotionally upset and that her speech was "slurred" (Tr 117-118).

30. Lt. Lupo is a 30-year veteran of the New York State Police who had been trained and certified as a Drug Recognition Expert by the NYSP and had administered and supervised the NYSP's Standardized Field Sobriety Testing Program between 1997 and 2001 (Tr 115).

31. Lt. Lupo introduced himself by name and position to Respondent who continued to insist that she not be put through the arrest process (Tr 118-119,121).

32. Respondent appeared to be on an "emotional rollercoaster." She vacillated between being very upset, then being a bit composed, and then being upset again (Tr 121). Respondent used the word "fuck" multiple times (Tr 130).

33. Lt. Lupo, standing no more than three or four feet from Respondent, observed that Respondent's eyes appeared glassy and very bloodshot, and he detected the stale smell of an alcoholic beverage that he recognized from his professional training and experience (Tr 118-119, 128).

34. In Lt. Lupo's professional opinion, Respondent was impaired by alcohol (Tr 131).

35. At approximately 9:55 AM, Lt. Lupo greeted Mr. Catalano, who had arrived at SP Rochester; Mr. Catalano indicated that he was acquainted with and present for Respondent, and that he was an attorney (Tr 122-123).

36. Lt. Lupo spoke with Trooper Kowalski and, contrary to normal protocol, Mr. Catalano was allowed to be present with Respondent during processing due to her emotional state (Tr 123).

37. Trooper Kowalski read DWI warnings to Respondent at 10:43 AM and 11:12 AM, after which he asked if she would submit to a chemical test to determine her blood-alcohol content. Respondent twice refused to submit to the test (Tr 43-44; Ex 14).

38. On February 13, 2106, Trooper Kowalski issued three Uniform Traffic Tickets to Respondent: M2135BG5R7 for Driving While Intoxicated; M2135BH4F4 for No Stopping/Standing/Parking on Highway; and M2145BKXHK for Unsafe Tire (Tr 44-45; Exs 1-3).

39. On August 15, 2016, Canandaigua City Court Judge Stephen D. Aronson sat as an Acting Judge of Rochester City Court and presided over a non-jury trial on the simplified traffic informations filed pursuant to the tickets issued to Respondent by Trooper Kowalski (Tr 44-45; Exs 1-6, 25).

40. At trial, the prosecution called Troopers Kowalski and Dolan as witnesses. Respondent, who was represented by Edward L. Fiandach, Esq., called only Mr. Catalano (Ex 25). At the conclusion of the trial, Judge Aronson reserved decision (Ex 25).

41. On August 22, 2016, Judge Aronson rendered his verdict finding Respondent guilty of the misdemeanor of driving while intoxicated (Vehicle and Traffic Law §1192(3)). He dismissed both traffic infractions (Exs 17, 26).

42. Consistent with his usual practice over his 34 years on the bench (Ex 26, p 3, lines 22-25), Judge Aronson explained his verdict stating, *inter alia*:

> [T]he condition of the defendant's vehicle stopped on a major thoroughfare, part of a front bumper missing with two flat tires, all unexplained, coupled with the trooper's credible testimony of an odor of an alcoholic beverage, and coupled with the defendant's illusive, incongruous and evasive responses … played an important role in my decision.
>
> Under the law, the demeanor, conduct and acts of a person charged with a crime is indicative of a consciousness of guilt. In going over all of the facts of the case in my mind, I took the fact that the defendant is a judge right out of the equation. I reviewed the facts backwards, forwards and sideways, and always came up with the same conclusion. There was simply no reasonable doubt. (Ex 26, p 5, lines 8-22).

43. Respondent acknowledged that she was feeling sad on the evening of February 12, 2016, as the weekend marked the one year anniversary of a close cousin's murder. She was also bothered by the prospect of spending her first Valentine's Day alone since her divorce (Tr 348). As a consequence, Respondent drank wine that Friday night (Tr 348).

44. Respondent testified that she left her home in Rochester at approximately 7:10 AM on Saturday, February 13, 2016, intending to drive to the "West Side YMCA" to participate in an eight o'clock "Body Pump" class (Tr 238, 240, 248, 324).

45. Respondent confirmed that although the morning was cold and the weather was "bad" (Tr 239), she was not wearing a coat (Tr 238, 329; Ex 13).

46. The left, front end of Respondent's vehicle was not damaged and her tires were not flat when she left her house (Tr 325).

47. Respondent "dozed off for a little bit" before a trooper approached her about 20 minutes later (Tr 242).

48. The trooper asked Respondent whether she had been in an accident and she replied: "No, I just have a flat tire" (Tr 243). Respondent was surprised by the damage to the left-front headlight and bumper of her vehicle (Tr 243).

49. Respondent never observed the trooper place his hand on his holster or touch, draw, or point his service weapon that morning (Tr 263, 330). Respondent testified that the trooper never made an overt threat of force to her, yelled, or used vulgarity or profanity in speaking with her (Tr 330-331).

50. With respect to her consumption of alcohol, Respondent confirmed that she gave sworn testimony during the Commission's investigation stating that she did not consume alcohol after 10:00 PM on February 12, 2016, and that when she was approached by Trooper Kowalski on the morning of February 13, 2016, she told him that she did not consume alcohol after 10:00 PM the previous evening (Tr 323-324).

51. On cross-examination, Respondent conceded that in connection with her alcohol evaluations one of her counselors reported that "[Respondent] shared she did drink alcohol the night before, consuming 2-3 glasses of wine. She states she started at about 1030/11pm and unsure when she finished" (Tr 349; Resp Ex C).

52. Respondent's sister, Felicia Astacio, was aware of Respondent's DWI case and testified that Respondent did not drink on a regular basis (Tr 208). Referencing a one-year time period prior to Respondent's DWI charge, Ms. Astacio testified that she was with Respondent "almost every day," that she did not consider her sister to be alcohol-dependent and that Respondent did not drink daily (Tr 208-209).

53. On March 24, 2016, Respondent underwent a comprehensive chemical dependency evaluation performed by Elizabeth Rybczak, a Credentialed Alcoholism and Substance Abuse Counselor (Resp Ex C).

54. Ms. Rybczak staffed Respondent's case with a treatment team on March 30, 2016, and "determined that patient is not being recommended for any treatment at this time as patient does not meet the criteria for a substance use disorder" (Resp Ex C).

55. On November 3, 2016, Respondent attended a substance abuse intake at Strong Recovery (Resp Ex A). Her assessment included a breathalyzer and a supervised urine toxicology screen, both of which were negative. Collateral interviews with her therapist and a colleague were conducted.

56. Based upon the information gathered, Karen Hospers, CASAC, reported a diagnostic impression of alcohol use disorder, mild (Resp Ex A). Ms. Hospers recommended that Respondent attend a 10-week relapse prevention group which she successfully completed (Resp Exs A, B).

57. On November 16, 2016, Respondent was evaluated by Dr. George Anstadt, through a referral from the Office of Court Administration (Resp Ex E). 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 (Resp Exs E, F).

58. Respondent began seeing a clinical psychologist, Vincent Ragonese, in October 2016 (Resp Ex H). In a letter dated October 9, 2017, Dr. Ragonese reported that Respondent admitted to consuming alcohol prior to pleading guilty to violating the terms and conditions of her conditional discharge and wrote that he "believe[d] that was an instance of self-medicating due to difficulty adjusting to her situation and not to alcoholism" (Resp Ex H).

59. 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" (Resp H).

PROPOSED CONCLUSIONS OF LAW AS TO CHARGE I

60. Respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules.

61. Respondent failed to avoid impropriety and the appearance of impropriety in that she failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules.

62. Respondent failed to so conduct her extra-judicial activities as to minimize the risk of conflict with judicial obligations, in that she failed to conduct her extra-

judicial activities so that they do not detract from the dignity of judicial office, in violation of Section 100.4(A)(2) of the Rules.

63. Respondent should be disciplined for cause pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law.

PROPOSED FINDINGS OF FACT AS TO CHARGE II

64. When Trooper Kowalski approached Respondent's car on the morning of February 13, 2016, he asked her whether she had consumed alcohol and where she was headed (Tr 20-21; Exs 10, 25). In response to Trooper Kowalski's inquiry, Respondent stated, "I'm going to City Court to do the arraignments at 9:30 this morning" (Tr 21, 61-64, 67, 248, 328; Exs 10, 25). Rochester City Court was east of Respondent's location and she was traveling in a westerly direction, away from the courthouse (Tr 7; Ex 25).

65. After being placed under arrest for DWI, Trooper Kowalski transported Respondent to the SP barracks for processing (Tr 39; Exs 10, 11, 25).

66. Lt. Lupo approached Respondent after observing that she was giving Trooper Kowalski difficulty (Tr 118).

67. Lt. Lupo observed that Respondent was "insistent on … asking that she not be put through the arrest process" saying that she had arraignments later in the morning and that nobody at the court was aware that she was not going to be showing up (Tr 119).

68. Lt. Lupo took contemporaneous notes to document some of Respondent's statements, which included: "Please don't do this;" "I have to go to work;" "I have arraignments;" and "I have court right now" (Tr 120, 137; Ex 83).

69. Respondent's request to telephone the court was honored (Tr 137).

70. Respondent conceded that it was not necessary for her to mention her court in order to convey that she had business to attend to and that she could have just said that she was going to work (Tr 334). Respondent acknowledged that she could have indicated to Lt. Lupo at the barracks that she had an urgent appointment (Tr 334).

PROPOSED CONCLUSIONS OF LAW AS TO CHARGE II

71. Respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules.

72. Respondent failed to avoid impropriety and the appearance of impropriety in that she failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules.

73. Respondent failed to avoid impropriety and the appearance of impropriety in that she lent the prestige of judicial office to advance her own private interests, in violation of Section 100.2(C) of the Rules.

74. Respondent failed to so conduct her extra-judicial activities as to minimize the risk of conflict with judicial obligations, in that she failed to conduct her extra-judicial activities so that they do not detract from the dignity of judicial office, in violation of Section 100.4(A)(2) of the Rules.

75. Respondent should be disciplined for cause pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law.

PROPOSED FINDINGS OF FACT AS TO CHARGE III

76. On August 22, 2016, Judge Aronson sentenced Respondent to a one-year conditional discharge for her DWI conviction (Exs 26, 27; Resp Ex P).

77. At sentencing, Respondent was provided a copy of her "Conditions of Conditional Discharge," which she signed and dated, and which included a boldface statement near the top of the first page that Respondent was required to "**Abstain from Alcoholic Beverages and All Products That Contain Alcohol**" (emphasis in original) (Ex 27; Resp Ex P).

78. Respondent was required to install and maintain a functioning ignition interlock device in any vehicle she operated and comply with all conditions of the IID (Exs 26, 27; Resp Ex P). 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 amount to a violation (Ex 27; Resp Ex P).

79. 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 7:31 AM, with a BAC of .067% (Ex 32).

80. On October 11, 2016, Judge Aronson signed a Declaration of Delinquency and arraigned Respondent on the alleged violation (Exs 31, 33, 34). At Respondent's

arraignment, her attorney, Mr. Fiandach, said that she was amenable to the prosecutor's recommendation to adjourn the matter to allow her to explore and engage in appropriate treatment (Ex 34). Judge Aronson adjourned the matter until November 16, 2016 (Ex 34).

81. On or about October 31, 2016, the Monroe County Office of Probation again notified Judge Aronson and the District Attorney that there was reasonable cause to believe that Respondent had violated the terms of her conditional discharge (Ex 36).

82. On November 3, 2016, Judge Aronson signed a second DOD 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% (Ex 37).

83. On November 16, 2016, Respondent appeared before Judge Aronson and pleaded 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 (Exs 35, 38).

84. Respondent's guilty plea satisfied the outstanding DOD dated October 11, 2016 (Exs 31, 35, 38).

85. Judge Aronson amended the conditional discharge by requiring that Respondent's IID be extended for an additional period of six months and that Respondent comply with any treatment recommendations made by her therapist (Tr 38).

86. Respondent testified that she was familiar with the conditional discharge form and understood that a failed test could be a violation of her conditional discharge, as

Respondent had used the form when presiding over DWI cases as a Rochester City Court Judge (Tr 363-365).

87. Respondent testified that she had an opportunity to read the conditions of conditional discharge at the time she received them but did not do so because she was upset and "didn't really like the speech [Judge Aronson] gave" (Tr 273).

88. Respondent acknowledged signing and dating each of the three pages of the conditional discharge form at sentencing and taking a copy home with her (Tr 273, 276; Ex 27; Resp Ex P).

89. Respondent testified that she consumed alcohol "more than once" between her DWI conviction on August 22, 2016, and sometime in October 2016 (Tr 277).

90. Respondent testified that she was drinking liquor and wine, during weekends and on other occasions, from on or about August 25, 2016, to on or about October 3, 2016 (Tr 380).

91. Respondent testified that she was the individual pictured allegedly violating IID conditions on September 12, 2016, and October 3, 2016 (Tr 378, 381-382; Exs 32, 36).

92. Respondent testified to knowing, prior to providing an IID breath sample on October 3, 2016, that she had consumed four glasses of wine and three shots of tequila, and that she "was drunk" and should not have been driving (Tr 368-369).

PROPOSED CONCLUSIONS OF LAW AS TO CHARGE III

93. Respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules.

94. Respondent failed to avoid impropriety and the appearance of impropriety in that she failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules.

95. Respondent failed to so conduct her extra-judicial activities as to minimize the risk of conflict with judicial obligations, in that she failed to conduct her extra-judicial activities so that they do not detract from the dignity of judicial office, in violation of Section 100.4(A)(2) of the Rules.

96. Respondent should be disciplined for cause pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law.

PROPOSED FINDINGS OF FACT AS TO CHARGE IV

97. On January 21, 2015, Respondent was presiding in Part I of Rochester City Court when defendant James Thomas was brought into the courtroom to be arraigned on a petit larceny charge (Penal Law §155.25) (Exs 56, 57, 58; FWC ¶37, Ans ¶2).

98. Respondent had represented Mr. Thomas as his defense attorney approximately three years earlier on a felony charge related to a highly-publicized jail escape involving a number of co-defendants.

99. Respondent represented Mr. Thomas for approximately one year and had visited him approximately two dozen times at the county jail during that period.

100. Mr. Thomas was on parole supervision in connection with the felony when he appeared before Respondent on January 21, 2015 (Exs 56, 58; FWC ¶38, Ans ¶2).

101. 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 she "like[d] him" and that she was going to transfer his case (Exs 56, 57, 58; FWC ¶39, Ans ¶2).

102. Respondent asked her court clerk, "Can it not go to [Judge Teresa] Johnson, please?" She then commented from the bench about Mr. Thomas, stating:

- "When … 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."
- "I wish, I wish … I could make him approach."

(Ex 58; FWC ¶42, Ans ¶2).

103. After learning from her court clerk that Mr. Thomas' case would be transferred to a judge other than Rochester City Court Judge Teresa Johnson, Respondent read Mr. Thomas the charge, and appointed counsel who entered a plea of not guilty on his behalf.

104. Respondent advised Mr. Thomas, "It's not appropriate for me to preside over your case" (Ex 58; FWC ¶43, Ans ¶2). When Mr. Thomas asked why Respondent could not preside over his case, she replied, "I would love to preside over your case, but I don't … want any conflicts" (Ex 58; FWC ¶44, Ans ¶2).

105. Respondent initially indicated that she would defer to the succeeding judge with respect to setting bail, but she then set bail at $50 (Ex 58; FWC ¶45, Ans ¶2). In setting bail, Respondent stated:

- "Oh. Since, since he's being held, it really doesn't matter. I'll hold you $50 cash or bond, concurrent to the, the parole hold ...."
- "But I'll hold you, so you're getting time on these charges."

(Tr 281; Ex 58; FWC ¶45, Ans ¶2).

106. Mr. Thomas told Respondent that the Public Defender "was good, but you were the best," and Respondent stated, "I appreciate that, Mr. Thomas," and "I totally love him. I'm so sad that he's in jail right now" (Ex 58; FWC ¶46, Ans ¶2).

107. Respondent acknowledged having warm feelings for Mr. Thomas and feeling sympathetic towards him (Tr 274, 279, 400; FWC ¶38, Ans ¶2).

108. Respondent understood that presiding over Mr. Thomas' case, based upon the nature of their relationship and his conduct in her court, would create the appearance of impropriety which was prohibited by the Rules Governing Judicial Conduct (Tr 280, 401-402).

109. Respondent testified that, typically, Mr. Thomas' case would have been transferred to Judge Johnson (Tr 281, 402-403). Respondent did not want Mr. Thomas' case transferred to Judge Johnson because she believed that Judge Johnson was not very "nice to anyone" and that Mr. Thomas would get harsher treatment and a less favorable case result from Judge Johnson (Tr 404-405).

110. 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 (Tr 406-407).

PROPOSED CONCLUSIONS OF LAW AS TO CHARGE IV

111. Respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules.

112. Respondent failed to avoid impropriety and the appearance of impropriety in that she failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules.

113. Respondent failed to perform the duties of judicial office impartially and diligently, in that she filed to disqualify herself in a proceeding in which her impartiality might reasonably be questioned due to a personal bias or prejudice concerning a defendant, in violation of Section 100.3(E)(1)(a)(i) of the Rules.

114. Respondent should be disciplined for cause pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law.

PROPOSED FINDINGS OF FACT AS TO CHARGE V

People v T[redacted] L[redacted]

115. On January 27, 2015, Respondent was scheduled to arraign T[redacted] L[redacted], who was in custody on the misdemeanor charge of criminal trespass in the third degree (Penal Law §140.10(a)) (Exs 59, 60, 63, 67; FWC ¶49, Ans ¶2).

116. Prior to calling Ms. L[redacted]'s case, Respondent learned from her clerk that Ms. L[redacted] was allegedly biting and spitting on people and may have been cursing, kicking and punching sheriff's deputies (Tr 408; Exs 59, 60, 63, 67; FWC ¶50, Ans ¶2).

117. Respondent spoke from the bench with a Monroe County Sheriff's Department Deputy about Ms. L[redacted], stating, "I heard she's going crazy" (Ex 67). Respondent commented further to the deputy, remarking:

- "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'."
- "Is she crazy or is she bad?"

(Tr 283-284; Ex 67).

118. Respondent did not arraign Ms. L[redacted] on January 27, 2015, and held her without bail (Exs 59, 64; FWC ¶52, Ans ¶2).

119. On January 30, 2015, Respondent arraigned Ms. L[redacted] and released her on her own recognizance (Exs 59, 65). Ms. L[redacted]'s court file noted "ROR-St. Mary's" and contained a letter from Strong Memorial Hospital in Rochester, New York, indicating

that Ms. L[redacted] was admitted to the hospital on February 8, 2015 (Exs 59, 61; FWC ¶53, Ans ¶2).

120. On or about February 26, 2015, Respondent granted defense counsel's motion to dismiss the charges against Ms. L[redacted] (Ex 59; FWC ¶54, Ans ¶2).

People v X[redacted] V[redacted]

121. On January 28, 2015, Respondent arraigned X[redacted] V[redacted], a 16-year-old high school student, who was charged with the misdemeanor of criminal diversion of prescription medications and prescriptions in the fourth degree (Penal Law §178.10), and a violation for unlawful possession of marihuana (Penal Law §221.05) (Exs 68-74; FWC ¶55, Ans ¶2).

122. Mr. V[redacted]'s charged conduct allegedly occurred on the grounds of the Schoo[redacted], a Rochester public high school (Exs 69, 71).

123. Respondent read Mr. V[redacted] the charges against him, noted that her daughter attended the School [redacted], and then said, "[I]t's one of the best schools in the city." Respondent asked Mr. V[redacted], "I don't think you went there to peddle prescription drugs, right?" (Ex 74; FWC ¶56, Ans ¶2).

124. Respondent identified Mr. V[redacted]'s mother in the courtroom and thanked her for being present, commenting to Mr. V[redacted]:

> I'm sure your mom is mortified to be here with you today, and embarrassed. I would probably be beating my daughter currently, right now, while she was getting arraigned if I was her. Don't embarrass your mother, okay?

(Exs 74; FWC ¶57, Ans ¶2).

125. On February 17, 2015, Respondent granted Mr. V[redacted] an adjournment in contemplation of dismissal in accordance with Criminal Procedure Law §170.55, conditioned upon Mr. V[redacted] performing 24 hours of community service (Ex 68; FWC ¶58, Ans ¶2). On or about April 21, 2015, Respondent determined that Mr. V[redacted] had satisfied the conditions of the ACD (Ex 68; FWC ¶58, Ans ¶2).

People v D[redacted] Y[redacted]

126. On January 15, 2015, Respondent arraigned D[redacted] Y[redacted], who was in custody having been charged with a violation for disorderly conduct when he blocked traffic by walking in the middle of the right lane of traffic (Penal Law §240.20(5)) (Exs 75-77; FWC ¶59, Ans ¶2).

127. Respondent read Mr. Y[redacted] the charge against him and advised counsel that Mr. Y[redacted] had other charges pending in Rochester City Court and was scheduled for a mental health examination pursuant to Criminal Procedure Law Article 730 (Exs 75-77; FWC ¶60, Ans ¶2).

128. Respondent told Mr. Y[redacted] that she would sentence him to time served if he pleaded guilty to the charge (Ex 77). Mr. Y[redacted]'s attorney, after conferring with him, advised Respondent that Mr. Y[redacted] would plead guilty (Exs 75, 77; FWC ¶61, Ans ¶2).

129. Prior to accepting Mr. Y[redacted]'s plea, Respondent stated:

> Mr. Y[redacted], 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.

(Ex 77; FWC ¶62, Ans ¶2).

130. Respondent accepted Mr. Y[redacted]'s guilty plea and reduced his penalty assessment fee to a judgment before stating, "Good luck, sir. Stay out of the street" (Exs 75, 77; FWC ¶63, Ans ¶2).

People v D[redacted] W[redacted]

131. On August 15, 2015, Respondent arraigned D[redacted] W[redacted], who was charged with the misdemeanor of sexual misconduct (Penal Law §130.20(1)) (Exs 78, 79, 82; FWC ¶64, Ans ¶2).

132. Respondent read the charge to Mr. W[redacted], explained that she was issuing an order of protection in favor of the alleged victim, and advised Mr. W[redacted] that he was to have no contact with the alleged victim. Respondent had previously signed an arrest warrant for Mr. W[redacted] in the matter and knew that Mr. W[redacted] and the alleged victim were classmates, so she clarified that Mr. W[redacted] could not interact with the alleged victim at school (Exs 78-82; FWC ¶65, Ans ¶2).

133. Mr. W[redacted]'s attorney referred to the alleged victim's delay in signing a statement against Mr. W[redacted] for digitally penetrating her vagina without her consent as, "buyer's remorse" (Ex 82).

134. Respondent laughed at the "buyer's remorse" comment and told the Assistant District Attorney, "That was funny. You didn't think that was funny[?]" (Exs 79, 82; FWC ¶66, Ans ¶2).

135. Following Mr. W[redacted]'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 didn't think it was funny."
- "She was offended, I thought it was hilarious."

(Ex 82; FWC ¶67, Ans ¶2).

136. Respondent had prior information about the complaint from having reviewed an arrest warrant package and had "already made certain assessments about the case;" Respondent testified that "there wasn't bail attached to [the case]" (Tr 291-292; Ex 80).

137. Respondent understood from her professional experience in the Domestic Violence Bureau of the District Attorney's Office that sexual assault victims are typically very hesitant to go forward out of embarrassment, or shame, or fear of becoming further victimized (Tr 291, 429).

138. Mr. W[redacted]'s case was at the end of the docket and Respondent testified that if the purported victim or her family were there, 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" (Tr 293-294, 430).

PROPOSED CONCLUSIONS OF LAW AS TO CHARGE V

139. Respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules.

140. Respondent failed to avoid impropriety and the appearance of impropriety in that she failed to respect and comply with the law and failed to act in a manner that

promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules.

141. Respondent failed to perform the duties of judicial office impartially and diligently, in that she failed to be patient, dignified and courteous to litigants, lawyers and others with whom she dealt in an official capacity, in violation of Section 100.3(B)(3) of the Rules.

142. Respondent should be disciplined for cause pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law.

PROPOSED FINDINGS OF FACT AS TO CHARGE VI

143. On August 22, 2016, after being convicted of DWI by Judge Aronson and sentenced to a one-year-conditional discharge, Respondent signed and received a copy of her "Conditions of Conditional Discharge" that provided, *inter alia*, that Respondent was to "submit to any recognized tests that are available to determine the use of alcohol or drugs" and required her to install and maintain a functioning IID in her vehicle (Ex 26; FWC ¶20, Ans ¶2; SFWC ¶¶8-9, SFWC Ans ¶¶3, 5).

144. On or about May 10, 2017, Assistant District Attorney V. Christopher Eaggleston forwarded 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 in Respondent's vehicle (Exs 42, 43).

145. Judge Aronson sent a letter dated May 15, 2017, to ADA Eaggleston and Respondent's attorney, Mr. Fiandach, 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 Et[G] lab analysis of her urine sample" (Ex 44). Judge Aronson directed in his letter that the test "be done **immediately**" (emphasis in original) and that the lab report be provided to the court by her counsel (Ex 44).

146. In accordance with Judge Aronson's requirement, Rochester City Court Clerk Jody Carmel drafted a document for the Monroe County Office of Probation on May 15, 2017, confirming Respondent's ordered EtG test (Tr 152, 155-156; Ex 45).

147. 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.**" (emphasis in original) (Tr 156; Ex 46). On Wednesday, May 24, 2017, Ms. Carmel mailed the notice to Respondent, Respondent's attorney, and ADA Eaggleston (Tr 158-160; 162-163, Exs 41, 46).

148. On May 30, 2017, Respondent did not appear in court (Tr 160; Ex 47). Her attorney, Mr. Fiandach, read into the record an email that he had sent to Respondent on May 26, 2017, which read:

> 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 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" (Ex 47) (emphasis added).

149. Judge Aronson signed a Declaration of Delinquency on May 30, 2017, finding reasonable cause to believe that Respondent had violated the terms and conditions of her conditional discharge by failing to comply with his directives to submit to an EtG test or to appear in Rochester City Court on May 30, 2017 (Exs 47, 48).

150. On May 30, 2017, Judge Aronson issued a bench warrant for Respondent's arrest for her failure to appear in Rochester City Court as directed (Exs 47, 49; SFWC ¶12; Ans SFWC ¶6).

151. On June 5, 2017, Respondent was taken into custody by Monroe County Sheriff's Office personnel pursuant to the bench warrant and was brought before Judge Aronson who ordered Respondent committed to jail pending a hearing (Ex 51; SFWC ¶13; Ans SFWC ¶1).

152. At the beginning of the proceedings on June 5, 2017, Respondent's attorney advised the court that at the time Judge Aronson ordered the EtG test, Respondent was in Thailand on vacation (Ex 51 pp 7-8). Judge Aronson observed that Respondent "exile[d herself] from the jurisdiction of the Court without advance notice to a place halfway around the world knowing that [her] 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?" (Ex 51 pp 10-11). Judge Aronson 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" (Ex 51, pp 10-11).

153. On June 8, 2017, following a hearing at which Respondent testified, Judge Aronson found that Respondent had violated the terms and conditions of the conditional discharge imposed in connection with her DWI conviction, and he remanded her pending sentencing (Exs 41, 52; SFWC ¶14; Ans SFWC ¶7).

154. On July 6, 2017, Judge Aronson sentenced Respondent to 60 days' incarceration and a three-year term of probation, which included the condition that Respondent wear a SCRAM alcohol-monitoring device for six months (Exs 53, 54; SFWC ¶1; Ans SFWC ¶8).

155. Respondent purchased a one-way ticket and left for Thailand on May 2, 2017; she intended to stay for several months until sometime in August 2017 (Tr 387; Ex 52).

156. Respondent understood prior to traveling that she was subject to being required to submit to alcohol testing as a condition of her conditional discharge (Tr 315-316). Respondent also understood before she left that there had been a "positive blow into the IID on April 9, 2017, that resulted in a vehicle lock-out and shut-down that required servicing to make the vehicle operational (Tr 306-307).

157. Prior to leaving the country, Respondent did not notify her Administrative Judge, Craig Doran, or her attorney, Mr. Fiandach, that she planned on traveling to Southeast Asia for 3 - 4 months (Tr 387-388).

158. Respondent failed to notify the Monroe County Office of Probation of her planned extended absence, notwithstanding that she was required to notify the probation office "prior to any change in address" (Tr 390-392; Ex 27; Resp Ex P).

159. On May 7, 2017, Respondent called Mr. Fiandach in response to his email advising her of a "bad blow" on her IID (Tr 309). Respondent informed Mr. Fiandach that she did not plan to return home until August and she thereafter went "to live … in a wat, with monks" (Tr 309).

160. Respondent changed her telephone service from Verizon to a Thai system, DTAC, but did not advise Mr. Fiandach of her change in carrier (Tr 388).

161. Respondent testified that, from Thailand on May 27, 2017, at approximately 3:30 AM (4:30 PM Eastern Standard Time on May 26, 2017, in Rochester), she responded by email to an email from Mr. Fiandach (Tr 309-310, 392). Mr. Fiandach informed her that she had to appear in court in four days or get an EtG test in Thailand (Tr 311, 392).

162. Respondent communicated to Mr. Fiandach that she believed there was a jurisdictional defect with her conditional discharge and that it was "all moot anyway" with respect to the judge's requirements (Tr 311).

163. Respondent, although unable to speak by telephone, was in "constant communication" with Mr. Fiandach by email and Google Voice and learned that Judge

Aronson had issued a bench warrant on May 30, 2017, when she had failed to appear in court (Tr 393; Exs 47, 49).

164. Respondent never checked a single, specific airline for a return trip and testified that she is unaware of the availability of daily flights from Bangkok to New York for such international airlines as Air Canada, Delta Airlines, Japan Air, Korean Air, Nippon Airlines, Turkish Air, and United Airlines (Tr 398-399).

165. Respondent left Thailand on June 3, 2017, and arrived in Rochester, New York, on June 4, 2017 (Tr 396, 463). She failed to surrender herself on her known outstanding bench warrant upon arriving (Tr 463).

PROPOSED CONCLUSIONS OF LAW AS TO CHARGE VI

166. Respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules.

167. Respondent failed to avoid impropriety and the appearance of impropriety in that she failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules.

168. Respondent failed to so conduct her extra-judicial activities as to minimize the risk of conflict with judicial obligations, in that she failed to conduct her extra-judicial activities so that they do not detract from the dignity of judicial office, in violation of Section 100.4(A)(2) of the Rules.

169. Respondent should be disciplined for cause pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law.