



NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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February 7, 2018

VIA EMAIL: [REDACTED]@[REDACTED].com
AND UPS NEXT DAY AIR

Mark S. Arisohn, Esq.
Labaton Sucharow LLP
140 Broadway
New York, New York 10005

Re: *Matter of Leticia D. Astacio*

Dear Mr. Arisohn:

Please accept this letter as Commission Counsel's Reply to Respondent's Proposed Findings of Fact and Conclusions of Law. Charges I-V of the Formal Written Complaint and Charge VI of the Second Formal Written Complaint are fully supported by the evidence and therefore should be sustained.

At the outset, Respondent's references to whether she will retain "her incumbency" or be removed from her judicial office (Resp Br 19, 20)¹ and her citations to prior Commission cases suggesting similar misconduct warrants censure (Resp Br 21) are inapposite to the issues before the Referee. Pursuant to the Commission's rules, the Referee may not make any recommendation "with respect to a sanction to be imposed by the commission." 22 NYCRR § 7000.6(l).

¹ "Resp Br" refers to Respondent's Proposed Findings of Fact and Conclusions of Law. "Ex" refers to Commission exhibits and "Resp Ex" refers to Respondent exhibits introduced into evidence at the hearing before the Referee. "Tr" refers to the transcript of the hearing.

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A. **Respondent's effort to blame Trooper Kowalski for her behavior is contradicted by the record and demonstrates her continued refusal to accept responsibility for her misconduct.**

Respondent's claim that her deplorable conduct was "provoked by a one hour and thirty minute apprehension" and should be excused because the "conduct of the State Police ... aggravated the situation" (Resp Br 20, 21) is contradicted by the record. It is striking evidence of her continued inability to accept responsibility for her conduct.

As set forth in the Commission's main brief, pp 5-11, Trooper Kowalski properly performed his duties after observing Respondent's heavily damaged car (Exs 7, 8), smelling alcohol, and hearing Respondent's responses to his questions. Respondent concedes that the trooper was obliged to investigate her possible criminal conduct (Tr 338-339). Respondent cites nothing to support her assertion that the DWI investigation should have been completed sooner.² And she cannot rebut record evidence that the investigation was prolonged by her combative ness and evasiveness, which required the trooper to call for backup (Tr 24-25; Exs 10, 25).

Respondent's assertion that she told Trooper Kowalski, "I wasn't driving. You didn't see me drive" in the "context of discussing whether there was probable cause" for her arrest (Resp Br 7; Tr 265) is extremely disingenuous. At the time of her arrest, Respondent had over a decade of experience prosecuting, defending, and adjudicating DWI cases (Tr 229-230, 334-335, 361) and would certainly have known that her statement was contrary to basic DWI case law.³

² Contrary to Respondent's claim (Resp Br 22), she was not arrested at 8:00 AM. Trooper Kowalski's Supporting Deposition (Ex 10), his Report of Refusal to Submit to Chemical Test (Ex 14), his testimony at Respondent's trial (Ex 25) and his testimony before the Referee (Tr 27) establish that Respondent was arrested at 8:43 AM.

³ "Uniformly, cases holding a defendant 'found behind the wheel with the motor running' to be engaged in 'operation' of the vehicle all include facts or circumstances proving that the defendant had actually moved the car while intoxicated, or intended to do so" *People v Dymond*, 601 NYS2d 1001 (1993). "Thus, criminal liability under [VTL] section 1192 can attach to conduct 'dangerously close' to driving, as long as that conduct occurs upon locations covered by the statute" (citations omitted). *People v Prescott*, 95 NY2d 655, 662 (2001).

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Respondent's argument that it was "obviously an abuse" for Trooper Kowalski to handcuff her after her arrest that "provoked her verbal outburst" (Resp Br 15, 16, 18) is entirely baseless. As Trooper Kowalski testified, it was the policy and procedure of the State Police to place individuals arrested in the field in handcuffs and to handcuff them to a bench by hand and/or ankle while at the State Police barracks (Tr 95).⁴ Respondent's assertion that this standard procedure was an "abuse" that justified her "verbal outburst" is consistent with her conduct during the arrest – she still believes she was entitled to special treatment because she is a judge.

B. Respondent did not promptly address the court's order to obtain an EtG test or appear in court as directed.

Respondent's claim that she promptly returned home from Thailand (Resp Br 36, 38) is simply untrue. Respondent did not comply with Judge Aronson's order to obtain an EtG lab test or appear in his court, a directive she acknowledged learning about at approximately 4:30 PM EST on May 26, 2017, four days before the court date (Tr 309-311, 392; Ex 52). Respondent's counsel in the criminal proceeding acknowledged that he had notified Respondent by telephone and email prior to May 27, 2017, about obtaining an EtG test (Ex 47, pp 6-7).

Respondent did not immediately book a return flight home. Rather, she told her attorney that a jurisdictional defect rendered the judge's requirements "all moot anyway" (Tr 311). Respondent also told her attorney that there was not sufficient time to travel home (Tr 311; Ex 52), ignoring her attorney's direction that she was required to appear in court if she was unable to comply with the lab test (Exs 47, 52).

Respondent did not begin investigating a return flight home until May 30, 2017 (Tr 396-397; Ex 52, p 20), four days after being advised of Judge Aronson's order. She did not board a plane in Thailand until June 3, 2017 (Tr 396), eight days after being advised of Judge Aronson's order. Significantly, when Respondent made up her mind to travel to Thailand because she was "sad" (Tr 305), she managed to leave the very day after deciding to go (Tr 387; Ex 52).

⁴ The State Police may lawfully handcuff and detain for questioning a defendant from a vehicle lawfully stopped on the Thruway if there is reasonable suspicion that she has been involved in criminal conduct. See *People v Rose*, 72 AD3d 1341, 1343 (2010).

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C. **Respondent's brief makes assertions of fact that are belied by the record.**

Respondent's assertions that the State Police did not honor her request to call City Court to advise that she would not be there (Resp Br 23) and did not permit her to call the City Court until she was already late, in order to cause her unnecessary stress and embarrassment (Resp Br 24), are inaccurate and contrary to the record.

Respondent testified that she understood that Saturday arraignments on February 13, 2016, would not start until after 9:30 "because of the fact that there was a holiday" and "it would take longer to get all the paperwork;" Respondent believed she would have needed to get to court by eleven o'clock (Tr 269). At some unknown time after her arrival at the State Police barracks, Respondent kept asking "to call City Court," and Trooper Kowalski kept offering to let her use the phone (Tr 269). Respondent was unable to recall any telephone numbers of the court or personnel, and could not think of any alternate means to identify telephone numbers to communicate her delay (Tr 269). Respondent had left her cell phone in her car at the scene of her arrest (Tr 246).⁵ Upon advising Trooper Kowalski that she needed her cell phone, a trooper was dispatched and retrieved her phone, and Respondent was allowed to call the court (Tr 137, 269).⁶

Respondent's assertion that she cooperated with the Commission "and answered all questions raised with candor and truthfulness" (Resp Br 18) is not entirely accurate. During the Commission's investigation, Respondent testified under oath that she had consumed no alcohol after 10:00 PM on February 12, 2016 (Tr 324). In actual fact, Respondent told a treatment provider on March 24, 2016 – just 6 weeks after her arrest – that she started drinking wine on February 12th at or after 10:30 PM and was unsure when she finished (emphasis added) (Resp Ex C).

⁵ There is no hearing evidence that Respondent made any request for her cell phone at the scene of her arrest.

⁶ Respondent testified that when her clerk suggested calling another judge about the arraignments, Respondent stated, "No. No, no, no. I think I'm almost done getting arrested, finally. I'm going to come there as soon as I leave here" (Tr 270).

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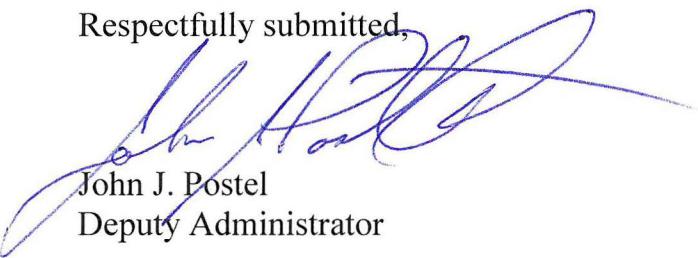
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Respondent's claim that Trooper Kowalski "played mind games with the Judge from 8:00 am until 9:30 am" and that "[t]he referee can fairly infer that she received this treatment, unfair and cruel, because she is a Judge" (Resp Br 22), is completely without support in the record. Curiously, this claim is contrary to Respondent's own repeated (but false) assertion that Trooper Kowalski did not know Respondent was a judge until she was at the State Police barracks (Resp Br 8, 13, 17, 24).⁷ More importantly, the record shows that Respondent was, in fact, afforded special accommodations not generally available to other defendants, including the opportunity to speak privately with an attorney at the scene of her arrest (Tr 38-39, 331; Ex 25) and to have the attorney with her during her processing in a secured area of the State Police barracks (Tr 123). As Respondent testified, throughout her prolonged mistreatment of Trooper Kowalski for which she recognized the need to apologize (Tr 443), Trooper Kowalski never yelled, returned profanity or threatened Respondent in any manner (Tr 330-331).

D. Conclusion

By reason of the foregoing, and as more fully explained in Commission Counsel's Memorandum, it is respectfully submitted that the factual allegations of the Formal Written Complaint and Second Formal Written Complaint have been established and that the findings of fact and conclusions of law proposed by Commission Counsel should be adopted.

Respectfully submitted,



John J. Postel
Deputy Administrator

cc: Robert F. Julian, Esq.
(via overnight delivery & email @ [REDACTED]@[REDACTED].com)

⁷ Trooper Kowalski testified: "...I did not know that she was a City Court Judge...until she made reference to it, in saying that she was going to be going to...City Court arraignments at 9:30" (Tr 42-43). Respondent's statement to Trooper Kowalski about City Court arraignments was made shortly after she was seated in his patrol car (Tr 21; Exs 10, 25).