To Be Argued By
Edward Lindner, Esq.
Time Requested: 15 Minutes

JCR-2018-00004

Court of Appeals of the State of New York

In the Matter of the Request of
LETICIA D. ASTACIO,
a Judge of the Rochester City Court, Monroe County,

Petitioner,

For Review of a Determination of the
NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT,

Respondent.

BRIEF FOR RESPONDENT STATE COMMISSION ON JUDICIAL CONDUCT

ROBERT H. TEMBECKJIAN
Counsel for Respondent State Commission on Judicial Conduct
Corning Tower, 23rd Floor
Empire State Plaza
Albany, New York 12223
518-453-4613

Of Counsel:

Edward Lindner, Esq.
John J. Postel, Esq.
David M. Duguay, Esq.

Dated: July 13, 2018

TABLE OF CONTENTS

TABLE OF AUTHORITIES

PAGE

CASES

COMMISSION DETERMINATIONS

STATUTES & REGULATIONS

[1] Commission determinations are available on the Commission's website at www.cjc.ny.gov.

RULES GOVERNING JUDICIAL CONDUCT

PRELIMINARY STATEMENT

Petitioner committed serious violations of law, asserted the prestige of office in attempting to evade the consequences of her behavior, knowingly violated a condition of her sentence, failed to adhere to a lawful court order and was incarcerated, and otherwise engaged in conduct so inimical to the role of a judge as to irredeemably undermine public confidence in her remaining on the bench.

On February 13, 2016, petitioner drove her car while intoxicated on an expressway in Rochester, New York. She was involved in a one-car accident that caused significant front-end damage to her vehicle and knocked the front driver-side tire nearly off its rim. Petitioner pulled her car on to the shoulder, called a friend, fell asleep and, when a NYS Trooper approached, claimed to be unaware she had been in an accident. Two NYS Troopers trained in DWI detection noted the odor of alcohol and concluded that Petitioner was intoxicated.

Six weeks after her conviction for DWI, petitioner attempted to commit the same crime again. Although the terms of her conditional discharge prohibited her from consuming alcohol, petitioner drank four glasses of wine and three shots of tequila. Petitioner knew she "was drunk" and "shouldn't be driving," but she got into her car and attempted to start it. Only her court-ordered ignition interlock device prevented her from driving while impaired by alcohol a second time. She pleaded guilty to violating the terms of her conditional discharge.

This serious misconduct is exacerbated by multiple aggravating factors. Petitioner was rude and profane in her interaction with the troopers who processed her arrest. She asserted her judicial office in an implicit request for special treatment. And she violated the terms of her conditional discharge a second time when she left for Thailand on one-day's notice, not long after another "bad blow" on her car's ignition interlock device. Petitioner did not tell her attorney, her Administrative Judge or the probation department that she was leaving. When her attorney first contacted her about the "bad blow," she changed cell phone carriers without advising him. When she learned on May 27, 2017, that she had been ordered undergo alcohol testing or to appear in court on May 30th, Petitioner took no immediate steps to comply. She did not depart Thailand until June 3rd, a week later, and did not complete court-ordered testing. Notwithstanding that she knew there was a warrant for her arrest, she did not immediately surrender herself to law enforcement when she returned to Rochester. She was arrested the next day.

In addition to the serious misconduct related to her DWI conviction, Petitioner committed additional misconduct while on the bench. She failed to recuse herself immediately in a case where she previously represented the defendant, and she attempted to have the case transferred away from a judge she thought would treat her former client harshly. She laughed at and then repeated a joke told by counsel at the expense of an alleged victim of sexual assault, saying

she thought it was "freakin' hilarious." And in two other criminal cases, Petitioner made rude and otherwise inappropriate comments from the bench.

Petitioner's belated attempt to feign contrition is transparently insincere. She still will not admit in her brief to this Court that she was intoxicated when she drove her car on February 13, 2016. She minimizes her expletive-laden responses during her arrest, claiming she was "provoked" by the troopers. She acknowledges that she was familiar with the DWI conditional discharge form, having used it in her own court, but claims that she was unaware that she was prohibited from consuming alcohol. She says nothing about the fact that, even after her DWI conviction, she tried to drive despite knowing she was drunk. And notwithstanding that her second conviction for violating her conditional discharge was upheld on appeal, she argues that the trial court's ruling was "inferential" and unsupported by authority.

Petitioner's conviction for DWI, her assertion of office for private benefit, the violation of her conditional discharge and her incarceration for violating a lawful court order would warrant her removal from office, even without her significant additional misconduct and failure to acknowledge the most serious elements of her wrongdoing. In its totality, her misconduct renders removal as the only appropriate sanction.

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, Petitioner operated an automobile while under the influence of alcohol (R96 ¶5).

Charge II alleged that Petitioner repeatedly asserted her judicial office to further her private interests in connection with her arrest for DWI (R99 ¶22).

Charge III alleged that on or about October 3, 2016, following her conviction for DWI, Petitioner violated the terms of her conditional discharge when, in attempting to operate her 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 a start-up re-test (R101 ¶28).

Charge IV alleged that on or about January 21, 2015, Petitioner failed to disqualify herself from presiding in *People v James Thomas*, notwithstanding that she had a prior attorney-client relationship with the defendant (R102-03 ¶36).

Charge V alleged that from on or about January 27, 2015, to on or about August 15, 2015, Petitioner made discourteous, insensitive, and undignified

comments from the bench in *People v T.L.*, *People v D.Y.*, and *People v D.W.* (R106 ¶48).[1]

Charge VI, as set forth in a Second Formal Written Complaint dated August 3, 2017, as amended by letter dated September 18, 2017, alleged that on or about May 30, 2017, Petitioner violated the terms of the conditional discharge imposed in connection with her conviction for DWI (R117 ¶6).

B. Petitioner's Answer

Petitioner filed a verified Answer to the Formal Written Complaint, dated June 5, 2017, and an Amended Answer verified on September 11, 2017.

Petitioner largely denied the allegations in Charges I, II and III (R112 ¶1).

Petitioner denied knowledge or information sufficient to address Charge IV (R112 ¶3), but did admit eight of the charged specifications (R103 ¶¶37-39, 104-05 ¶¶42-46) concerning her alleged failure to disqualify herself from presiding over the arraignment of *People v James Thomas* (R112 ¶2).

Petitioner denied Charge V (R112 ¶1), but did admit 18 specifications to the charge concerning her alleged discourteous, insensitive, and undignified comments from the bench in *People v T.L.* (R106 ¶¶49-50, 107 ¶¶52-54, 112 ¶2), *People v D.Y.* (R108-09 ¶¶59-63,112 ¶2), and *People v D.W.* (R109-10 ¶¶64-67, 112 ¶2).

---

[1] The Commission did not sustain the portion of Charge V alleging misconduct in *People v X.V.* (R19-20). As a result, those allegations will not be discussed in this brief.

Petitioner filed an Answer to the Second Formal Written Complaint verified on September 11, 2017. Petitioner admitted Charge VI, but denied that the adjudication was "fair and based on true or accurate information." Petitioner averred, "This matter is on Appeal" (R122 ¶4).

C. The Hearing

By Order dated August 15, 2017, the Commission designated Mark S. Arisohn, Esq., as Referee to preside over a hearing held in Syracuse on October 17-19, 2017.

Counsel for the Commission called four witnesses and introduced 85 exhibits into evidence (R654-1098). Petitioner called two witnesses, testified on her own behalf and introduced 16 exhibits into evidence (R1099-216).

D. The Referee's Report

The Referee issued a report dated March 5, 2018, sustaining Charges I, III, IV, and V of the Formal Written Complaint and Charge VI of the Second Formal Written Complaint. The Referee sustained Charge II in part, finding that Petitioner's comments at the New York State Police barracks lent the prestige of her office to advance her own interests, but that her comment at roadside informing Trooper Kowalski that she was a judge, did not. The Referee concluded that Petitioner's conduct violated the Rules Governing Judicial Conduct ("Rules") (R1408-13 ¶¶ 120-23, 125-41).

E. The Commission's Determination

On April 23, 2018, the Commission issued a determination that Petitioner's behavior – driving while intoxicated, asserting her judicial office, willful violation of the terms of her conditional discharge and multiple instances of improper conduct on the bench – demonstrated her unfitness for judicial office (R28).

The Commission noted this Court's assessment that DWI is a "very serious crime" that "has caused many tragic consequences" (R28). Although Petitioner continued to deny she was intoxicated at the time of her arrest, the Commission found that her conviction established her guilt beyond a reasonable doubt and "by itself" was grounds for discipline (R29). The Commission also found it "troubling[]" that at the time she was arrested for driving while intoxicated, Petitioner was on her way to preside in court (R29).

Petitioner's misconduct was exacerbated by her "gratuitous references to her judicial position" while at the trooper barracks, coupled with her request to "Please don't do this" (R29). This "implicit request for special treatment" conveyed the appearance that she was "calling attention to her status as a judge in order to bolster her plea" that she not be charged (R29).

Petitioner's "repeated, willful violations of the terms of her conditional discharge demonstrate a persistent, flagrant disregard" of her ethical responsibilities (R34). Notwithstanding that Petitioner's conditional discharge

required her to "[a]bstain from [a]lcoholic [b]everages," Petitioner began "drinking heavily," "within days of her sentencing" (R31-32). She acknowledged that she "consumed four glasses of wine and three shots" of tequila and "was drunk" and "should not be driving" when, only weeks after sentencing, she attempted to start and operate her vehicle (R32-33).

Thereafter, Petitioner booked a one-way ticket to Thailand and "did not inform either her administrative judge, her attorney or the probation office of her planned absence" and "nor did she ensure" that she could be reached "for communication regarding her compliance with court-mandated conditions" (R33). She "did not obtain the [court-ordered] testing or appear in court as directed" and "when she finally returned, she failed to surrender herself on the outstanding warrant that had been issued for her failure to appear" (R33-34).

Finally, the Commission determined that Petitioner improperly arraigned a former client and "misuse[d] her judicial position to benefit him" (R34) and made highly inappropriate comments from the bench in three other cases (R34-35).

In determining the appropriate sanction, the Commission found that "standing alone," Petitioner's conduct in connection with her DWI warranted a "severe sanction" in light of the "compelling" aggravating circumstances – a crash that caused significant damage, her hostile, profane response to the police, her assertion of judicial office and the fact that she was intoxicated while on her way to

preside in court (R38). Petitioner "compounded her misconduct to an unacceptable degree by willfully engaging in behavior that resulted in two .... violat[ions] of the terms of her conditional discharge" (R38). And she "showed little or no recognition of her personal responsibility for ... her actions" (R39). Petitioner's conduct "irretrievably damaged public confidence in her ability to serve as a judge," demonstrating her "manifest unfitness for judicial office" (R40).

THE FACTS

Charge I: On or about February 13, 2016, in Rochester, New York, Petitioner drove her automobile while intoxicated.

The Commission found, as did the trial and appellate courts, that Petitioner drove her motor vehicle on Interstate 490 in Rochester, New York, while she was intoxicated (R12, 683, 816-25, 1089-98).

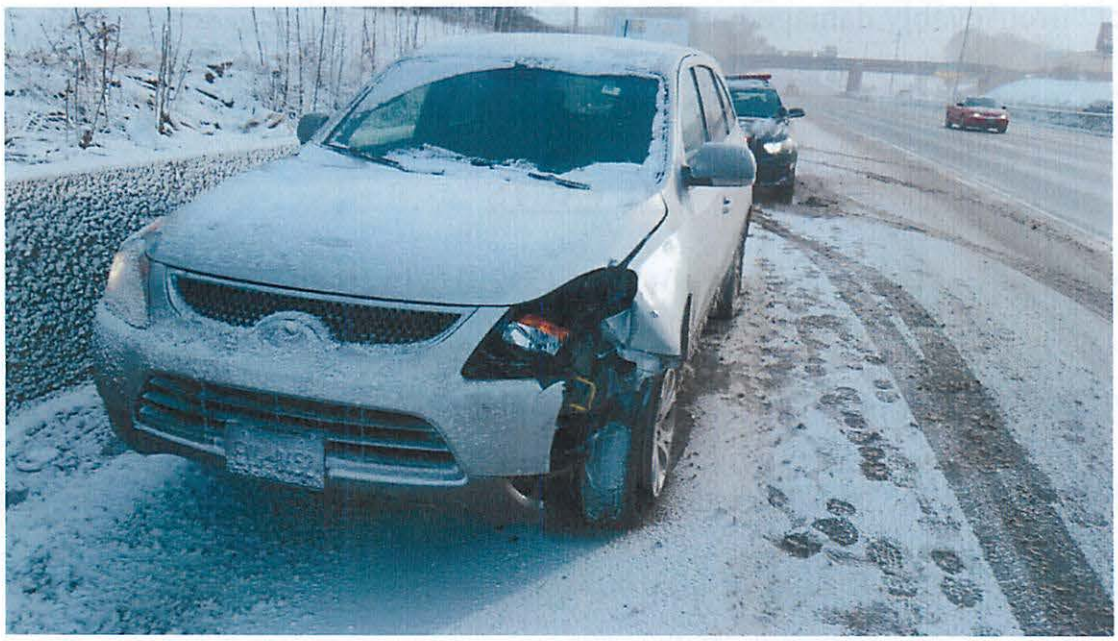
A. Petitioner was arrested and charged with driving while intoxicated.

On February 13, 2016, at approximately 7:54 AM, NYS Trooper Christopher Kowalski was traveling westbound on Interstate 490 when he observed a vehicle on the shoulder (R133-35, 663, 667, 712). Kowalski pulled over behind the gray Hyundai (R135, 713). The road was slightly snow-covered, without black ice, and there was approximately a half-inch of snow on the shoulder (R133-34, 216, 230, 663, 667). It was the coldest day of the year; at 7:54 AM the temperature was -2.9° F with a wind chill of -27.2° F (R133, 718, 831).

Petitioner was alone in the car. The car was running and both front windows

were open (R136, 663, 718). Petitioner's clothes appeared disheveled (R156, 667).

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 (R135, 137, 140, 660-61, 664, 713-14).



(Exs 7, 8; R660-61).

Trooper Kowalski asked Petitioner if she had been in an accident (R141, 664, 718). Petitioner replied, "I don't recall hitting anything. I just have a flat tire" (R141, 145, 664, 719). Kowalski then asked her to step out of her car (R145). After looking at the damage to her car, Petitioner provided no further explanation (R146, 203, 719). Petitioner was unable to provide her driver's license and vehicle registration, and accompanied Kowalski to his patrol car (R146, 720).

While in the patrol car, Kowalski, a 14-year veteran of the State Police who was trained in DWI detection and enforcement, smelled the odor of alcohol and asked Petitioner to remove the gum from her mouth (R132-33, 147, 721). Petitioner threw the gum outside (R147, 721-22). Trooper Kowalski continued to smell a strong odor of alcohol when Petitioner spoke (R148, 156, 721-22). He also observed that Petitioner's eyes were bloodshot, watery and glassy, and that her face was flushed (R156, 664, 667, 724). Kowalski asked Petitioner if she had consumed alcohol and she replied, "I've drank in my lifetime" (R148, 664, 667).

In response to the trooper's questions, Petitioner stated that she was coming from "home" and "going to City Court to do the arraignments at 9:30 this morning" (R148, 149, 190, 195, 664, 722). Rochester City Court was in the opposite direction of Petitioner's westbound-facing vehicle (R135, 722). When Trooper Kowalski asked what direction she was headed, Petitioner stated that she was "not good with direction" (R150, 664, 724).

At approximately 8:15 AM, when Kowalski asked Petitioner what time it was, Petitioner responded, "7:15" (R151, 664, 724-25). When the trooper inquired once more whether she had consumed alcohol that morning or the night before, Petitioner again responded, I've "drank in my lifetime" (R151, 723).

When Trooper Kowalski inquired about whether Petitioner had consumed alcohol that morning or the night before, Petitioner 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" (R149, 152, 202, 204-06, 664, 753). Kowalski had not displayed his service weapon or made any threat (R152). He was concerned about Petitioner's comment and got out of the car (R152). He called for backup assistance and then re-entered the patrol car and asked Petitioner to refrain from making further baseless statements (R152-53).

Petitioner 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 (R153, 195, 664, 667, 725). Petitioner passed the non-standardized alphabet and counting tests (R154-55, 200, 667, 725-26). Petitioner told the trooper that she would not take a preliminary breath test ("PBT") without her lawyer being present (R166-67). Trooper Kowalski, based upon his observations that morning and his professional expertise, believed that Petitioner was intoxicated and placed her under arrest at approximately 8:43 AM (R155, 663, 708).

Shortly thereafter, Trooper Casey Dolan, a 23-year veteran of the State Police, appeared on the scene with a PBT device (R229, 231-32). Trooper Dolan heard Petitioner speaking in a raised, irritated voice, and noted that she seemed annoyed and upset (R232, 764). Dolan told Petitioner, "This trooper has an obligation to ask you to submit to [the PBT]. You were involved in a motor vehicle accident" (R232, R666, 764). Petitioner replied, "No, he doesn't. He can just go and mind his own fucking business" (R232, 666, 764).

Trooper Kowalski spoke with Petitioner's attorney, Christian Catalano, who had appeared on the scene (R166, 209-10).[2] Kowalski discussed the possibility of undoing Petitioner's arrest if she passed the PBT and then allowed Mr. Catalano to speak privately with Petitioner (R166-67, 184-85, 209-10). After Petitioner spoke with Mr. Catalano, she provided a breath sample that tested positive for the presence of alcohol (R161, 210, 663, 667).

B. Petitioner was hostile and profane during transport to the police barracks.

At approximately 9:23 AM, Trooper Kowalski transported Petitioner to the State Police barracks ("SP Rochester") (R185). Petitioner was upset, irate, belligerent and swearing loudly during the drive (R163). She repeatedly stated: "I

[2] VTL §1194(1) (b) provides: "Every person operating a motor vehicle which has been involved in an accident … shall, at the request of a police officer, submit to a breath test … . If such test indicates that such operator has consumed alcohol, the police officer may request such operator to submit to a chemical test … ."

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"; "Why are you fucking doing this to me? I would never do this to you" (R162-63, 665).

C. Petitioner exhibited evidence of alcohol impairment during processing and refused to take a chemical breath test.

While being processed at SP Rochester, Petitioner remained "unruly" "irate, angry, [and] upset" and was swearing loudly (R164). Lieutenant Jon Lupo, the designated Acting Zone Commander, heard Petitioner yelling at Kowalski and noted that she sounded emotionally upset and that her speech was "slurred" (R245-46). Lt. Lupo is a 31-year veteran of the State Police who was trained as a Drug Recognition Expert (R243). He supervised the State Police Standardized Field Sobriety Testing Program between 1997 and 2001 (R243).

Lt. Lupo introduced himself to Petitioner, who continued to insist that she not be put through the arrest process (R246-47, 249-50). Petitioner appeared to be on an "emotional rollercoaster" (R259). She vacillated between being very upset, then a bit composed, and then being upset again (R249). Petitioner used the word "fuck" several times (R258). Lt. Lupo, standing no more than three or four feet from Petitioner, observed that Petitioner'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 (R246-47, 256, 1085-86). In Lt. Lupo's professional opinion, Petitioner was impaired by alcohol (R259).

At approximately 9:55 AM, Lupo spoke with Mr. Catalano, who indicated that he was acquainted with the Petitioner and that he was an attorney (R250-51). Lupo spoke with Kowalski and, contrary to protocol, allowed Catalano to be present with Petitioner during processing due to her emotional state (R251).

At 10:43 AM and 11:12 AM, Trooper Kowalski read DWI warnings and asked Petitioner if she would submit to a chemical test. Petitioner twice refused (R171-72, 668). Kowalski issued Petitioner three traffic citations for Driving While Intoxicated, No Stopping/Standing/Parking on Highway and Unsafe Tire (R172-73, 654-56).

D. Petitioner 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 (R689) and presided over Petitioner's non-jury trial (R654-59, 707-815). The prosecution called Troopers Kowalski and Dolan as witnesses. Petitioner, who was represented by Edward L. Fiandach, Esq., called only Mr. Catalano. At the conclusion of the trial, Judge Aronson reserved decision (R814).

On August 22, 2016, Judge Aronson found Petitioner guilty of the misdemeanor of driving while intoxicated [VTL §1192(3)] and dismissed both

traffic infractions (R683, 820, 824-25).[3] Judge Aronson explained the evidentiary basis of his verdict as follows:

> [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 alcohol, 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. (R820).

E. Petitioner's testimony and evidence regarding Charge I.

During the hearing, Petitioner testified she believed she "should not have been convicted" of DWI and that "the system failed [her]" because she "wasn't drunk" and there "wasn't evidence that [she] was drunk" (R469-70). In her written submissions, she argued to both the Referee and the Commission that "it has not been proven by a preponderance of the evidence that she was under the influence of alcohol at the time of her arrest" (R29; 1390-91, 1516, 1520, 1553). At oral argument before the Commission, Petitioner said that she couldn't say "honestly that I am under the opinion that I was intoxicated on that day. I wouldn't have gotten in my car and driven" (R65-66).

---

[3] Petitioner's DWI conviction was affirmed on October 4, 2017, in a decision by Acting Monroe County Court Judge William F. Kocher (R1089-98).

According to Petitioner, on the morning of her arrest, she was on her way to an exercise class prior to court and may have "hit, like a chunk of ice, or some debris in the roadway" (R388). She stopped on the shoulder of the road, telephoned Mr. Catalano and "dozed off for a little bit" (R388-90). She conceded that when Trooper Kowalski asked whether she had been in an accident she replied, "No, I just have a flat tire" (R391). She was surprised by the damage to her left-front headlight and bumper (R391).

Petitioner testified that after the trooper stated he could smell alcohol, "the conversation got more hostile" or "more argumentative" (R392). She confirmed that she was unable to produce her driver's license (R393). She told Kowalski, "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" (R401). Petitioner asked the trooper to "call a DWI guy" 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" (R401).

Petitioner admitted that after being asked when she last drank alcohol, she stated, "I've drank in my lifetime. I'm not going to have this discussion with you" (R394, 402). Petitioner acknowledged that she told the trooper that she was uncomfortable and fearful that he might shoot her (R411), but conceded that the

trooper never placed his hand on his holster or service weapon and never made an overt threat of force (R478-79).

On the ride to SP Rochester, Petitioner was "super upset" and she "totally flipped out at that point" (R409). She admitted that she made all of the statements alleged by the trooper including: "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" (R414-15, 487).

Petitioner also conceded that she said: "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" (R410).

With respect to her consumption of alcohol, Petitioner 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 (R471-72).

On cross-examination, however, Petitioner conceded that in connection with her alcohol evaluations, one of her counselors reported that "[Petitioner] shared she

did drink alcohol the night before, consuming 2-3 glasses of wine. She stated she started at about 10:30 or 11:00 and unsure when she finished" (R497).[4]

Charge II: On or about February 13, 2016, Petitioner repeatedly asserted her judicial office in connection with her arrest.

After being placed under arrest for DWI, Trooper Kowalski transported Petitioner to SP Rochester for processing (R167, 663, 665,708). Lt. Lupo approached Petitioner after observing that she was giving Trooper Kowalski difficulty (R246). Lt. Lupo observed that Petitioner was "insistent on … asking that she not be put through the arrest process" saying that she had arraignments later in the morning (R247). Lt. Lupo took contemporaneous notes to document some of Petitioner's statements, which included: "Please don't do this," "I have to go to work," "I have arraignments," and "I have court right now" (R248, 265, 1085). Petitioner was "in a state of emotional upset," "pleading and almost begging … not to be subjected to the arrest process" (R257). Lt. Lupo testified that "it would be special treatment" if he had complied with Petitioner's request (R276).

A. Petitioner's testimony regarding Charge II

Petitioner acknowledged that she could have indicated to Lt. Lupo at SP Rochester that she had an urgent appointment, rather than referencing her court

[4] Petitioner told another therapist that she had "consumed a few glasses of wine on Thursday, and three glasses of wine Friday night" (R500).

(R482). It did not occur to Petitioner 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 (R482-83).

Charge III: On or about October 3, 2016, following her conviction for Driving While Intoxicated, Petitioner 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 Petitioner to a one-year conditional discharge for her DWI conviction (R822, 826, 1214). At sentencing, Petitioner was provided a copy of her "Conditions of Conditional Discharge" (R816, 826, 1214), which she signed and dated, and which included a boldface statement near the top of the first page that Petitioner was required to "**Abstain from Alcoholic Beverages and All Products That Contain Alcohol**" (emphasis in original) (R826, 1214). Petitioner was also required to install and maintain a functioning ignition interlock device in any vehicle she operated and comply with all conditions of the IID (R822, 826, 1214). The form stated that a device indication of a "failed test or re-test where the BAC was .05% or higher" would amount to a violation (R826, 1214).

On or about September 30, 2016, the Monroe County Probation Office notified Judge Aronson and the District Attorney that there was reasonable cause to believe that Petitioner had failed an IID start-up test on September 12, 2016, at

7:31 AM, with a BAC of .067% (R837). On October 11, 2016, Judge Aronson signed a Declaration of Delinquency (DOD) and arraigned Petitioner on the alleged violation (R836, 845, 846-50). At Petitioner's arraignment, her attorney said that she was amenable to the prosecutor's recommendation to adjourn the matter to allow her to explore and engage in appropriate treatment (R848-49). Judge Aronson adjourned the matter until November 16, 2016 (R849).

On or about October 31, 2016, the Probation Office again notified Judge Aronson and the District Attorney that there was reasonable cause to believe that Petitioner had violated the terms of her conditional discharge (R852). On November 3, 2016, Judge Aronson signed a second DOD that alleged Petitioner 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% (R860).

On November 16, 2016, Petitioner 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% [5] BAC and thereafter failing to perform an IID start-up re-test (R851, 861-75). Petitioner's guilty plea also satisfied the outstanding DOD dated October 11, 2016 (R836, 851, 861-75). Judge

[5] VTL §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."

Aronson amended the conditional discharge by requiring that Petitioner's IID be extended for an additional period of six months and that Petitioner comply with any treatment recommendations made by her therapist (R874).

A. Petitioner's testimony regarding Charge III

Petitioner conceded that she knew, 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 "shouldn't be driving" (R516-17).

Petitioner also admitted that she consumed alcohol "more than once" after her DWI conviction (R425). Petitioner 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 (R548).

Petitioner was familiar with the conditional discharge form, which she used when presiding over DWI cases as a City Court Judge, and she understood that a failed test could be a violation (R511-13).

Petitioner had an opportunity to read the conditions of conditional discharge at the time she received them but claimed she did not do so because she was upset and "didn't really like the speech [Judge Aronson] gave" (R421). She acknowledged signing each of the three pages of the conditional discharge form at sentencing and taking a copy with her (R421, 424, 826, 1214).

Charge IV: On or about January 21, 2015, Petitioner failed to disqualify herself from presiding over the arraignment in *People v James Thomas*, notwithstanding her prior attorney-client relationship with the defendant.

On January 21, 2015, Petitioner was presiding in Rochester City Court when defendant James Thomas was brought into the courtroom to be arraigned on a petit larceny charge (Penal Law §155.25) (R103 ¶37, 112 ¶2, 1020-21, 1023-32). Petitioner had represented Mr. Thomas as his defense attorney approximately three years earlier on a felony charge related to a highly-publicized jail escape. Petitioner 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 Petitioner (R103 ¶38, 112 ¶2, 1020, 1023-32).

When Mr. Thomas was brought into Petitioner's courtroom, he smiled and waved at Petitioner who was on the bench. Petitioner laughed and disclosed to counsel that she "like[d] him" and that she was going to transfer his case (R103 ¶39, 112 ¶2, 1020-21, 1023).

Petitioner asked her court clerk, "Can it not go to Judge 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."

(R104 ¶42, 112 ¶2, 1026).

After learning from her court clerk that Mr. Thomas' case would be transferred to a judge other than Judge Johnson, Petitioner read Mr. Thomas the charge and appointed counsel who entered a plea of not guilty on his behalf. Petitioner advised Mr. Thomas, "It's not appropriate for me to preside over your case" (R104 ¶43, 112 ¶2, 1027). When Mr. Thomas asked why Petitioner could not preside over his case, she replied, "I would love to preside over your case, but I don't … want any conflicts" (R104 ¶44, 112 ¶2, 1028).

Petitioner initially indicated that she would defer to the succeeding judge with respect to setting bail, but she then set bail at $50 (R104-05 ¶45, 112 ¶2, 1029). In setting bail, Petitioner 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."

(R104-05 ¶45, 112 ¶2, 429, 1029).

Mr. Thomas told Petitioner that the Public Defender "was good, but you were the best," and Petitioner stated, "I appreciate that, Mr. Thomas," and "I totally love him. I'm so sad that he's in jail right now" (R105 ¶46, 112 ¶2, 1030).

A. Petitioner's testimony regarding Charge IV

Petitioner acknowledged having warm feelings for Mr. Thomas (R568) and she understood that presiding over Mr. Thomas' case, based upon the nature of their relationship would create the appearance of impropriety (R428, 569-70).

Petitioner testified that, typically, Mr. Thomas' case would have been transferred to Rochester City Court Judge Teresa Johnson (R429, 570-71). She admitted that she 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 result (R572-73).

Petitioner conceded 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 (R574-75).

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

As the Commission found, Petitioner made inappropriate comments while presiding over three different criminal cases.

A. *People v T.L.*

On January 27, 2015, Petitioner was scheduled to arraign T.L., who was in custody on the misdemeanor charge of criminal trespass in the third degree (Penal Law §140.10(a)) (R106 ¶49, 112 ¶2, 1033-34, 1037, 1041-48). Prior to calling the case, Petitioner learned that Ms. L was allegedly cursing, kicking and punching sheriff's deputies (R106 ¶50, 112 ¶2, 576).

Petitioner commented to a Sheriff's Office Deputy, "I heard she's going crazy" (R1044). Petitioner then stated, *inter alia*:

- "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?"

(R431-32, 1044-45).

Petitioner held Ms. L without bail (R107 ¶52, 112 ¶2, 1033, 1038). On January 30, 2015, Petitioner arraigned Ms. L and released her on her own recognizance (R1033, 1039). Ms. L's court file noted "ROR-St. Mary's" and contained a letter from Strong Memorial Hospital in Rochester, New York,

indicating that Ms. L was admitted to the hospital on February 8, 2015 (R107 ¶53, 112 ¶2, 1033, 1035).

B. Petitioner's testimony regarding T.L.

Petitioner testified that she was joking with the deputy and did not intend for her communication with him to be recorded; she was trying to determine whether Ms. L 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" (R431-33, 576-79). She acknowledged that "in retrospect," her comments were inappropriate (R432-33).

C. *People v D.Y.*

On August 15, 2015, Petitioner arraigned D.Y., who was charged with a violation for disorderly conduct when he blocked traffic by walking in the roadway (Penal Law §240.20(5)) (R108 ¶59, 112 ¶2, 1062-64). Petitioner read the charge and advised counsel that Mr. Y had other charges pending in Rochester City Court and was scheduled for a mental health examination pursuant to Criminal Procedure Law Article 730 (R108 ¶60, 112 ¶2, 1066).

Petitioner told Mr. Y that she would sentence him to time served if he pleaded guilty to the charge (R1067). Mr. Y's attorney, after conferring with him, advised Petitioner that Mr. Y would plead guilty (R108 ¶61, 112 ¶2, 1067). Prior to accepting Mr. Y's plea, Petitioner stated:

> Mr. Y[], 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.

(R108-09 ¶62, 112 ¶2, 1064).

Petitioner accepted Mr. Y's guilty plea and stated, "Good luck, sir. Stay out of the street" (R109 ¶63, 112 ¶2, 1068).

D. Petitioner's hearing testimony regarding D.Y.

Petitioner testified that in retrospect she would have phrased her comments differently, stating, "I probably shouldn't reference running people over as a judge" (R438).

E. *People v D.W.*

On August 15, 2015, Petitioner arraigned D.W., who was charged with the misdemeanor of sexual misconduct for allegedly digitally penetrating the victim's vagina without consent (Penal Law §130.20(1)) (R109 ¶64, 112 ¶2, 1071-72, 1075). Petitioner read the charge and issued a "no contact" order of protection in favor of the alleged victim (R109 ¶65, 112 ¶2, 1071-75).

Mr. W's attorney referred to the alleged victim's delay in signing a statement against Mr. W as "buyer's remorse" (R1075). Petitioner laughed at the comment and told the Assistant District Attorney, "That was funny. You didn't think that was funny[?]" (R109 ¶66, 112 ¶2, 1081).

Following Mr. W's arraignment, Petitioner 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."

(R109-10 ¶67, 112 ¶2, 1083).

F. Petitioner's testimony regarding D.W.

Petitioner claimed that her laughter in response to the comment was unintentional (R440-41). Petitioner said, "When I laughed, I saw the face of my [A]DA, who generally has an unpleasant face, that [A]DA, 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" (R440, 594).

Petitioner claimed that "looking at the allegations … 'buyer's remorse' had a comical component to it," but she acknowledged that her response was not appropriate (R441).

Petitioner understood from her experience in the Domestic Violence Bureau at the DA's office that sexual assault victims are typically very hesitant to go forward due to embarrassment, shame, or fear of becoming further victimized (R439, 597). Petitioner testified that if the purported victim or her family were

there, she "would have been mortified at them having the impression that I … took that situation lightly or that I … didn't care about what was alleged to have happened to her" (R441-42).

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

On August 22, 2016, after being convicted of DWI and sentenced to a one-year-conditional discharge, Petitioner signed and received a copy of her "Conditions of Conditional Discharge" that provided, *inter alia*, that Petitioner 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 (R98 ¶20, 112 ¶2, 117 ¶8, 122 ¶¶3, 5, 826).

On May 1, 2017, Petitioner decided "to go to Thailand and have a spiritual mecca" (R453-54, 554). Petitioner purchased a one-way ticket and left for Thailand the following day; she intended to stay for several months until sometime in August 2017 (R555, 945). Petitioner did not advise her attorney, her Administrative Judge or the Probation Office that she was leaving the country (R555-56, 558-60).

On or about May 10, 2017, ADA V. Christopher Eaggleston forwarded Judge Aronson a notification from the Probation Office that the IID in Petitioner's vehicle had registered a failed start-up test on April 29, 2017. The IID registered

a .061% BAC on a sample that was provided by an individual who could not be seen on the camera (R879, 895).[6]

On May 15, 2017, Judge Aronson sent a letter to ADA Eaggleston and Petitioner's attorney stating that he would not issue a Declaration of Delinquency concerning the failed start-up test on April 29, 2017, but that he "intend[ed] to enforce the provision of the conditional discharge requiring the defendant to submit to tests for alcohol use" and that Petitioner was "require[d]…to submit to an Et[G] lab analysis of her urine sample" (R897). Judge Aronson directed that the test "be done **immediately**" (emphasis in original) and that the lab report be provided to the court by Petitioner's counsel (R897).

On May 24, 2017, at the direction of Judge Aronson, City Court Clerk Jody Carmel sent ADA Eaggleston and Mr. Fiandach a notice of Judge Aronson's May 15, 2017 order stating that Petitioner "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) (R284-88, 878, 899).

---

[6] At the time she left for Thailand, Petitioner knew 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 (R454-55).

In the weeks after ADA Eaggleston's May 10th notice of the failed test, Mr. Fiandach notified Petitioner by telephone that Judge Aronson had ordered her to take an EtG test (R905-06). However, after her May 7th telephone conversation with Mr. Fiandach, Petitioner changed her telephone service from Verizon to a Thai system and did not advise her attorney that she had changed her cell phone carrier (R556).[7]

On May 26, 2017, Mr. Fiandach emailed Petitioner and notified her that the court had ordered her to submit to an EtG test or to appear in court on May 30th (R905-06). Petitioner received the email (R457, 906). She did not take an EtG test (R562).

On May 30, 2017, Petitioner did not appear in court (R288, 900-10). Mr. Fiandach read the email he sent to Petitioner on May 26, 2017, into the record:

> 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" (R905-06).

[7] At the June 5, 2017, court appearance, Mr. Fiandach maintained that because of the change in carriers, Petitioner did not get the voice mail he left her regarding the EtG test (R920-21).

Judge Aronson signed a Declaration of Delinquency, finding reasonable cause to believe that Petitioner violated the terms of her conditional discharge by failing to comply with his directives to submit to an EtG test or to appear in court on May 30, 2017 (R900, 911), and issued a bench warrant for Petitioner's arrest (R118 ¶12, 122 ¶6, 905, 912).

Petitioner returned to Rochester from Thailand on June 4, 2017 (R461, 631). Although she knew there was an outstanding bench warrant for her arrest, she failed to surrender herself upon arriving (R631). On June 5, 2017, Petitioner was taken into custody and brought before Judge Aronson (R119 ¶13, 122 ¶1, 914-28). Petitioner's attorney advised the court that at the time Judge Aronson ordered the EtG test, Petitioner was in Thailand on a vacation (R920-21). Judge Aronson observed that Petitioner "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?" (R923-24). 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" (R924). Judge Aronson ordered Petitioner committed to jail pending a hearing (R119 ¶13, 122 ¶1, 928).

On June 8, 2017, Judge Aronson found that Petitioner had violated the terms of her conditional discharge and he remanded her pending sentencing (R119 ¶14, 122 ¶7, 878, 968-70).[8]

On July 6, 2017, Judge Aronson sentenced Petitioner to 60 days' incarceration with three years' probation, including a condition that Petitioner wear a SCRAM alcohol-monitoring device (R116 ¶15, 122 ¶8, 1011, 1015).

A. Petitioner's testimony regarding Charge VI

Petitioner understood prior to traveling to Thailand that she was required to submit to alcohol testing as a condition of her conditional discharge (R463-64). Petitioner also knew before she left that there had been a "positive blow" into the IID on April 9, 2017 (R454-55), but she claimed she had no knowledge of the "positive blow" on April 29th (R456-57).

Petitioner conceded that prior to leaving the country, she did not notify Administrative Judge Craig Doran, or her attorney, Mr. Fiandach, that she planned on traveling to Southeast Asia for three to four (R555-56). Petitioner failed to notify the Probation Office of her extended absence, notwithstanding that she was required to notify them "prior to any change in address" (R558-60, 826-27, 1214-15).

[8] Judge Aronson's finding that Petitioner violated the terms of her conditional discharge was affirmed on appeal by the Monroe County Court on December 8, 2017 (R25). On May 24, 2018, this Court denied Petitioner's application for leave. 2018 WL2939567.

Petitioner acknowledged that sometime after the April 29th failed IID test but before ADA Eggleston notified the court on May 10th, Mr. Fiandach learned of the failed test and emailed Petitioner. On May 7, 2017, Petitioner called Mr. Fiandach in response to his email. Petitioner believed that Mr. Fiandach's reference to a "bad blow" on her IID related to the April 9th incident and not the failed test on April 29th (R457). According to Petitioner, Mr. Fiandach believed that the ADA and probation were not recommending that Judge Aronson violate her for the IID incident (R457). Petitioner informed Mr. Fiandach that she did not plan to return home until August and she thereafter went "to live … in a wat, with monks" (R457). Thereafter, Petitioner changed her telephone service from Verizon to a Thai system, but did not advise Mr. Fiandach of her change in carrier (R556).

Petitioner conceded that she received Mr. Fiandach's May 26, 2017 email advising her that Judge Aronson had ordered her to immediately take an EtG test or to appear in court on May 30th (R457-59, 560, 905-06). On May 27, 2017, at approximately 3:30 AM (4:30 PM Eastern Standard Time on May 26, 2017, in Rochester),[9] Petitioner replied by email that she believed there was a jurisdictional defect with her conditional discharge and that it was "all moot anyway" (R457-59). According to Petitioner, she told Mr. Fiandach that she did not have sufficient time

[9] Petitioner testified that Thailand is in a time zone 11 hours ahead of Eastern Standard Time (R561).

to either get an EtG test done in Thailand or travel home and asked him to request an adjournment of her case (R459).[10]

Petitioner never checked a specific airline for a return trip and testified that she was unaware of the availability of daily flights from Bangkok to New York on such international airlines as Air Canada, Delta Airlines, Japan Air, Korean Air, Nippon Airlines, Turkish Air, and United Airlines (R566-67).

Petitioner left Thailand on June 3, 2017, and arrived in Rochester, New York, on June 4, 2017 (R461, 564, 631). She acknowledged that although she knew there was an outstanding warrant for her arrest, she failed to surrender herself (R631). The following day, June 5, 2017, Petitioner was arrested and brought before Judge Aronson (R462, 912, 914).

[10] Mr. Fiandach made no mention of a request for an adjournment when he appeared before Judge Aronson on May 30, 2017 (R900-910) or when he explained the reasons Petitioner did not appear as previously ordered during the June 5, 2017, proceeding (R920-22).

ARGUMENT

POINT I

PETITIONER COMMITTED JUDICIAL MISCONDUCT WHEN SHE OPERATED HER MOTOR VEHICLE WHILE INTOXICATED, WAS RUDE AND HOSTILE TO LAW ENFORCEMENT, ASSERTED HER JUDICIAL OFFICE FOR PERSONAL BENEFIT AND TWICE VIOLATED THE TERMS OF HER CONDITIONAL DISCHARGE.

"A judge shall respect and comply with the law and shall conduct ... herself *at all times* in a manner that promotes public confidence in the integrity and impartiality of the judiciary." *Matter of Mazzei,* 81 NY2d 568, 572 (1993) *citing* 22 NYCRR §100.2(a) (emphasis in original). Petitioner failed to respect and comply with the law when she drove her car while intoxicated, on her way to preside in court. She committed additional misconduct in a series of incidents arising from her alcohol-related arrest, when she was rude and hostile to law enforcement, asserted her judicial office for personal benefit and twice violated the terms of her conditional discharge.

As this Court held in *Matter of Quinn,* 54 NY2d 386, 392 (1981),

> [t]he fact that there is no evidence that [her] drinking directly interfered with the performance of [her] duties on the Bench is not determinative. A Judge also has a higher obligation to insure that [her] conduct off the Bench does not undermine the integrity of the judiciary or public confidence in [her] character and judicial temperament.

A. Petitioner committed judicial misconduct when she drove her vehicle while intoxicated.

"Driving while intoxicated is a 'very serious crime,'" *People v Washington,* 23 NY3d 228, 231 (2014) that this Court has "long recognized as a 'menace.'" *People v Odum,* __ NY3d __, 2018 NY Slip Op 03173, 2018 WL 2048709, *2 (2018). As the Commission found, inasmuch as Petitioner was convicted after trial "under a 'beyond a reasonable doubt' standard of proof, the doctrine of collateral estoppel forecloses [her] from contesting the fact that she was driving while intoxicated on February 13, 2016" (R12). *See, e.g. Suffolk Co Dept of Social Services obo Michael V v James M,* 83 NY2d 178, 182-83 (1994); *S.T. Grand, Inc v City of New York,* 32 NY2d 300, 304-05 (1973).

In any event, contrary to Petitioner's argument to the Commission (R29, 65-66, 1390-91, 1516, 1520, 1553), there was more than a preponderance of hearing evidence that she operated her vehicle while under the influence of alcohol. In particular, the evidence showed:

- On the morning of February 13, 2016, Petitioner's vehicle sustained "heavy front-end damage to the … driver's side," which indicated her car "had just been involved in a motor vehicle accident" (R137, 140)
- When Trooper Kowalski inquired, Petitioner denied knowing her car had been damaged beyond a flat tire (R141, 388, 660-61, 663).

- Trooper Kowalski smelled a strong odor of alcohol on Petitioner's breath (R147-48) and observed that Petitioner's eyes were bloodshot, watery and glassy, and her face was flushed (R 156, 663, 667, 708).
- While interacting with Petitioner at SP Rochester, Lt. Lupo observed that Petitioner's eyes appeared glassy and very bloodshot, her breath had the odor of a stale alcoholic beverage, and she was on an "emotional rollercoaster" (R246-47, 256, 259).
- Two highly-experienced 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 Standardized Field Sobriety Testing Program – both formed the professional opinion that Petitioner was impaired by alcohol (R154-55, 243, 259, 654, 663, 726-27).

By operating her vehicle under the influence of alcohol, Petitioner violated the Rules, which require that a judge maintain high standards of conduct, respect and comply with the law, and conduct her extra-judicial affairs so as not to detract from the dignity of judicial office. Rules 100.1, 100.2(A), 100.4(A) (2).

B. Petitioner committed judicial misconduct when she asserted the prestige of her judicial position during her encounter with law enforcement.

A judge is prohibited from lending the prestige of judicial office to advance her own interests. Rule 100.2(C). Where, as here, a judge references her judicial status in connection with a personal matter, this Court has condemned such conduct, even in the "absence of a specific request for favorable treatment or special consideration." *Matter of Edwards,* 67 NY2d 153, 155 (1986). "[A]ny communication from a judge to an outside agency … may be perceived as one backed by the power and prestige of judicial office." *Matter of Lonschein,* 50 NY2d 569, 572 (1980).

During processing at SP Rochester, with Lt. Lupo present, Petitioner repeatedly made statements advising the troopers of her judicial status in the context of seeking accommodations (R1392 ¶47, 1393 ¶52). Her statements included: "Please don't do this," "I have to go to work," "I have arraignments" and "I have court right now" (R248, 265, 1085). Lt. Lupo understood Petitioner's remarks to mean that she was attempting to avoid having her arrest processed (R1392 ¶47).

Petitioner's invocation of her judicial status violated Rules 100.1, 100.2(A), (C) and 100.4(A) (2), which *inter alia* prohibit a judge from lending the prestige of judicial office to advance the judge's personal interests.

C. Petitioner committed judicial misconduct when she twice violated the terms and conditions of her conditional discharge.

Every judge, on or 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." *Matter of Kuehnel*, 49 NY2d 445, 469 (1980). As a judge, Petitioner "was obligated to conduct herself at all times in a manner that reflected her own personal respect for the letter and spirit of the law." *Matter of Backal,* 87 NY2d 1, 8 (1995). Petitioner failed to show "her own personal respect" for the law and the legal system when she twice violated the terms of her conditional discharge.

1. The October 2016 violation

There is no question that Petitioner, with years of criminal law experience as a prosecutor, defense attorney and judge, clearly understood that she was required to abide by the conditional discharge sentence. She was very familiar with the three-page "Conditions of Conditional Discharge" ("CCD form"), having used the form herself while presiding on the bench (R511-13). Petitioner signed and dated each page of CCD form in the courtroom and took a copy home (R507-08, 826-28). Near the top of the first page, the second bulleted condition read in boldface type: **"Abstain from Alcoholic Beverages and All Products That Contain Alcohol"** (R826).

During sentencing, Judge Aronson ordered Petitioner from the bench to "comply with ignition interlock device requirements" (R822). The CCD form specified six violations of an ignition interlock device 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, 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" (R828).

Yet, within days of her sentencing, Petitioner began drinking liquor and wine (R548). On September 12, 2016, just weeks after she was sentenced, Petitioner was captured in a photograph blowing into the IID installed on her vehicle and recorded a BAC of .067% (R837).

On October 3, 2016, after consuming "four glasses of wine and three shots" of tequila, and knowing she was "drunk" and "shouldn't be driving," Petitioner was captured in a photograph blowing into her vehicle's IID and recorded a BAC of .078% (R516-17, 549-50, 852).

On November 16, 2016, Petitioner 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, in satisfaction of both the September 12th and October 3rd violations (R836, 851, 861-75).

2. The November 2017 violation

On May 2, 2017, Petitioner embarked on a trip to Thailand where she intended to stay for three or four months (R453-54, 554-55). Petitioner understood that she was still under the authority of the court and was subject to random testing for alcohol use (R463-64, R826).

When Petitioner departed for Thailand, she knew there had been another IID lockout of her car, which constituted a violation of her sentence (R455). Yet Petitioner set off on her extended journey on extremely short notice – the very next day after she decided to leave – without notifying the probation office of her change of location (R554-55, 558-59). Petitioner 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 (R555-56).

On May 7, 2017, Petitioner had a telephone conversation with her lawyer in which he advised her that there had been a "bad blow" on her interlock device (R456). Shortly thereafter, Petitioner changed her phone carrier to a Thai system and did not inform her attorney that she had switched carriers (R556-57).

According to Petitioner, she first learned in an email from her attorney on May 27th that Judge Aronson had ordered her to undergo EtG testing or to appear in court on May 30th (R560). Rather than attempt to obtain an EtG test or make travel plans to timely appear in court, Petitioner took no action (R560-64).

Petitioner waited six days to board a return flight home (R564). When she arrived in Rochester, she failed to surrender herself on the outstanding warrant and went home (R631).

After a hearing at which she testified, Petitioner was found to have violated the conditions of her conditional discharge (R929-72). 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 (R878, 1011 1015, 1019). Judge Aronson's finding that Petitioner violated the terms of her conditional discharge was affirmed on appeal by the Monroe County Court on December 8, 2017 (R25). On May 24, 2018, this Court denied Petitioner's application for leave. 2018 WL2939567.

By twice violating the terms of the conditional discharge, Petitioner failed to respect and comply with the law and her conduct detracted from the dignity of judicial office in violation of Rules 100.1, 100.2(A) and 100.4(A) (2).

POINT II

PETITIONER COMMITTED JUDICIAL MISCONDUCT WHEN SHE PRESIDED OVER THE ARRAIGNMENT OF A FORMER CLIENT AND MADE DISCOURTEOUS, INSENSTIVE, AND UNDIGNIFIED COMMENTS FROM THE BENCH IN THREE CRIMINAL MATTERS.

Every judge has "a duty to conduct [herself] 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 (1991). *See also Matter of Cohen*, 74 NY2d 272, 278 (1989). The Rules Governing Judicial Conduct "exist to maintain respect toward everyone who appears in a court and to encourage respect for the judicial process." *Matter of Romano,* 93 NY2d 161, 164 (1999). Petitioner failed to inspire confidence in her impartiality when she presided over the arraignment of her former client and when she disrespected those who appeared before her by making insensitive and undignified comments in three criminal cases.

A. People v Thomas

When Petitioner's former client James Thomas came into her courtroom smiling and waving on January 21, 2015, Petitioner laughed and understood immediately that presiding in his case would create the appearance of impropriety (R428, 569-70, 1024). Recognizing her obligation to disqualify herself, Petitioner stated, "It's not appropriate for me to preside over your case" and "I don't want any conflicts" (R1027-28).

Notwithstanding her obligation to do so, Petitioner did not immediately recuse herself. Instead, she arraigned Mr. Thomas, read the charges and then exercised her judicial discretion by appointing Mr. Thomas an attorney (R573, 1020, 1027-28).

Even more disturbing, Petitioner then intervened on Mr. Thomas' behalf and asked that his case "not go to [Judge] Johnson, please" (R17, 1025), because she believed that Mr. Thomas would get "harsher treatment" from Judge Johnson and a less favorable result (R18, 572-73).

Finally, after initially saying she would leave the bail determination to the next judge, Petitioner honored Mr. Thomas' attorney's request and set $50 bail in order to provide Mr. Thomas the benefit of receiving jail time credit on his current charge (R574-75, 1020, 1029).

As this Court held in *Matter of LaBombard,* 11 NY3d 294, 298 (2008), when a judge determines that she must recuse herself from a case on the merits due to a prior relationship with a party, it is misconduct to preside at the arraignment and set bail. "The appearance of favoritism that arose from petitioner's decision to hear the matter was compounded," *Id.* at 298, by her attempt to steer the case to a judge she thought would be more favorable to Mr. Thomas, and by setting bail for the sole purpose of giving Mr. Thomas the benefit of jail time credit.

B. People v T. L.

In *People v T.L.*, Petitioner 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 (R625). Notwithstanding that possibility, Petitioner made remarks, in open court, that the police should "punch her in the face," "tase her," "shoot her" and strike her with a billy-club. Petitioner didn't "like [Ms. L's] attitude" and said that she "needs a whoopin'" (R1045). In doing so, she failed to be "patient, dignified and courteous" to those with whom she dealt in her judicial capacity. Rule 100.3(B) (3).

C. People v. D.Y.

Petitioner also failed to be "patient, dignified and courteous" pursuant to Rule 100.3(B)(3), when she told a defendant charged with disorderly conduct for walking in the middle of the street that she herself "would totally run [people] over" who "walk in front of my car" because she found it "super annoying" and "disrespectful" (R1064).

D. People v D.W.

Petitioner's comments in *People v D.W.*, made in response to a crude joke at the expense of a victim of sexual abuse, are particularly troubling. The Commission properly found that:

> [h]er response to a defense attorney's comment mocking an alleged victim's claim of sexual abuse was insensitive and

> conveyed the appearance that [Petitioner] regarded the criminal charge as an appropriate subject for humor (R35).

Petitioner's argument to this Court that her laughter was "involuntary" and her subsequent remarks were merely an "attempt[] to explain" (Br 20) should be rejected. As the Commission noted in rejecting a similar argument below:

> [Petitioner's] testimony that she was caught off-guard by the attorney's words, laughed involuntarily and then tried "to smooth it over" is belied by the transcript of the proceeding, which indicates that after laughing and commenting that the attorney's remark "was funny," she exacerbated the impropriety by returning to the subject a minute or two later, repeating the insensitive remark, chiding the prosecutor for failing to find the comment amusing and commenting that she herself found it "freakin' hilarious" (R35).

In *Matter of Romano, supra,* this Court addressed a similar situation, finding that a judge's "joke [ ] about the nature of the alleged abuse" evinces an "outspoken insensitivity concerning charges involving ... sexual abuse." *Id.* at 163. There, as here, the judge's conduct demonstrated "serious disregard for the standards of judicial conduct. *Id.* at 164.

POINT III

THE COMMISSION PROCEEDING WAS FAIR AND UNBIASED.

Petitioner's claim that the Commission proceeding was unfair (Br 31-33) is without merit. Where a party alleges that a "determination [is] based not on a dispassionate review of the facts but on a body's prejudgment or biased

evaluation," there "must be a factual demonstration to support the allegation of bias and proof that the outcome flowed from it. Here there is neither." *Warder v Bd of Regents,* 53 NY2d 186, 197 (1981).

There is simply no evidence to suggest that the brief colloquy cited by Petitioner (Br 32) had any effect on the outcome. Indeed, the Commission's determination is actually more favorable to the Petitioner than the Referee's report.[11] Notably, Petitioner cannot cite a single additional comment from any Commission member to support her claim that there was a "toxic environment."

Nor can Petitioner cite any factual finding or conclusion of law in the Commission's determination that was "tainted." While it is undoubtedly improper for an agency to base its decision on evidence outside the record, *see Simpson v Wolansky,* 38 NY2d 391, 396 (1975), the Commission did not do so here. The Commission explicitly noted that its "decision [was] based solely on the evidence adduced at the hearing and the arguments presented as reflected in our findings herein" (R40, n7). A review of the Commission's analysis makes it abundantly clear that it is based entirely on facts found by the Referee (R1-41).

Moreover, inasmuch "as the record reveals independent reasons that fully support [the Commission's] determination, [Petitioner has] failed to show that the

---

[11] The Commission dismissed a portion of Charge V of the Formal Written Complaint alleging that Petitioner made improper comments in *People v X.V.* (R20). That specification was sustained by the Referee (R1400-01, 1412).

alleged bias was the cause" of the Commission's adverse decision. *Daxor v NYS Dep't of Health,* 90 NY2d 89, 101 (1997).

Finally, even assuming, *arguendo*, that Petitioner could show improper bias, the remedy would not be to impose a lesser sanction, as Petitioner suggests (Br 33). Because this Court has "broad plenary power to determine the facts and appropriate sanction in exercise of its own sound discretion," *Matter of Quinn,* 54 NY2d 386, 391 (1981), the Court could simply disregard the colloquy, as the Commission clearly did, and find that Petitioner should be removed based on the overwhelming record evidence that she is unfit for judicial office.

POINT IV

PETITIONER SHOULD BE REMOVED FROM OFFICE.

The record reflects a pattern of serious judicial misconduct that renders Petitioner unfit for judicial office.

Petitioner drove on an expressway in Rochester while intoxicated and crashed her car. She was uncooperative, rude and profane with law enforcement personnel who investigated the accident and subsequently arrested her. She asserted her judicial office in an attempt to avoid the consequences of an arrest. Petitioner twice knowingly violated the sentence imposed by the court as a result of her DWI conviction, including attempting to start her car at a time when she was

drunk only weeks after sentencing. And she was incarcerated for violating a court order to take an EtG test or to appear in court.

While on the bench, Petitioner knowingly failed to recuse herself from a criminal matter involving a former client, attempted to steer the case away from a judge she personally disliked and set bail to benefit the defendant notwithstanding that she knew she should not do so. Petitioner repeatedly exhibited seriously inappropriate courtroom demeanor in three other cases by *inter alia* suggesting the use of physical violence against a young defendant with possible mental health issues, stating that she would run over people who walked in front of her car, and repeatedly laughing at a disparaging comment about the alleged victim of a sexual assault.

Taken as a whole, the record reflects "a pattern of injudicious behavior … which cannot be viewed as acceptable conduct by one holding judicial office." *Matter of Simon,* 28 NY3d 35, 38 (2016) *citing Matter of VonderHeide,* 72 NY2d 658, 600 (1988). Her conduct – most notably her well-publicized violations of the terms of her conditional discharge – have damaged "public confidence in [her] character and judicial temperament," *Matter of Going,* 97 NY2d 121, 127 (2001), creating "serious doubts that this breach in trust is reparable." *Matter of Restaino,* 10 NY3d 577, 591 (2008). Indeed, it would be unprecedented for this Court, as it

would have been for the Commission, to retain in office a judge who showed such disregard for the law that she had to be jailed for it.

A. Petitioner's conduct in driving while intoxicated warrants her removal in light of the multiple, serious, aggravating factors.

Petitioner engaged in serious criminal conduct and serious judicial misconduct when she endangered public safety by driving while intoxicated on the morning of February 13, 2016, and crashing her vehicle. She greatly exacerbated that misconduct by her rude and profane responses to law enforcement, her assertion of judicial office in an attempt to avoid arrest, her two convictions for violating the terms of her conditional discharge, her incarceration for violating a court order and her continuing failure to accept responsibility for her actions.

Following this Court's lead, the Commission has made clear that it considers "[d]riving while intoxicated [to be] a 'very serious crime.'" *Matter of Landicino,* 2016 Ann Rep 128, 136 (Commn on Jud Conduct, December 28, 2015),[12] 2015 WL 9680319 *4, *citing People v Washington,* 23 NY3d 228, 231 (2014). Such conduct is particularly serious here, where "troublingly, [it] occurred as [Petitioner] was on her way to court to perform judicial duties" (R29).

[12] Commission determinations are available on the Commission's website at www.cjc.ny.gov.

In determining an appropriate disposition for alcohol-related driving offenses, the Commission has long-considered mitigating and aggravating circumstances, including:

- the level of intoxication,
- whether the judge's conduct caused an accident or injury,
- whether the conduct was isolated or part of a pattern,
- whether the judge cooperated with law enforcement and/or asserted her judicial position, and
- whether the judge accepts responsibility for her actions.

Landicino at 137, *5. *See also, e.g., Matter of Burke,* 2010 Ann Rep 110, 113 (Commn on Jud Conduct, December 15, 2009), 2009 WL 5212133, *3; *Matter of Stelling,* 2003 Ann Rep 165, 166 (Commn on Jud Conduct, October 1, 2002), 2002 WL 31267502, *2.

In this case, every one of these factors exacerbates Petitioner's misconduct:

- Petitioner was convicted of Driving While Intoxicated (R683, 1089-98), an offense this Court has "long recognized as a 'menace.'" *People v Odum,* __ NY3d __, 2018 NY Slip Op 03173, 2018 WL 2048709, *2 (2018), rather than the lesser offense of Driving While Ability Impaired.

- Petitioner caused an accident. Trooper Kowalski observed "heavy front-end damage to the … driver's side," which indicated her car "had just been involved in a motor vehicle accident (R137, 140, 660-61).
- Petitioner's conduct was not an isolated incident. She acknowledges that only weeks after she was sentenced for DWI, she consumed "four glasses of wine and three shots" of tequila and, despite knowing she was "drunk" and "shouldn't be driving," she attempted to start her vehicle (R516-17, 549-50, 852). But for the intervention of the interlock device, Petitioner would have committed the same crime again.
- Petitioner was rude, uncooperative and profane in her interactions with the New York State Troopers who processed her arrest, telling Trooper Kowalski, "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" (R149, 152, 202, 204-06, 664, 753). She told Trooper Dolan that Kowalski should "just go and mind his own fucking business" (R232, 666, 764). On the drive to the barracks she was irate and belligerent, telling Kowalski: "You're fucking ruining my life"; "You don't have to do this. This isn't part of your job";

"Why are you fucking doing this to me? I would never do this to you" (R162-63, 665).

- Petitioner asserted her judicial office in an attempt to seek special treatment and avoid arrest. Lt. Lupo took contemporaneous notes to document some of Petitioner's statements, which included: "Please don't do this," "I have arraignments," and "I have court right now" (R248, 265, 1085).
- As is set forth below, pp 57-60, Petitioner has not accepted responsibility for her actions.

Unlike *Matter of Quinn* and *Matter of Landicino, supra,* Petitioner's misconduct is not mitigated by the disease of alcoholism. Record evidence, including the findings of multiple professionals, established that Petitioner does not suffer from alcohol or substance abuse dependency and Petitioner has made no argument to the contrary (R11-12, 27, 38, 1389 ¶¶37-38, 1390 ¶¶39-41).

B. Petitioner's additional misconduct elevates the sanction.

Standing alone, Petitioner's conviction for DWI, her conduct during the arrest, her two subsequent convictions for violating the terms of her conditional discharge, and her incareceration, warrant her removal. In addition to such egregious off-the-bench behavior, the Commission found that Petitioner committed multiple acts of misconduct while on the bench. These additional acts of

misconduct are a significant aggravating factor that renders removal the only appropriate sanction.

In *People v Thomas*, Petitioner knowingly ignored the ethical requirement to recuse herself immediately from a case involving a former client, deciding instead to set bail in order to give him credit for jail time and attempting to steer the case away from a fellow jurist she felt would treat Mr. Thomas harshly (R18-19). Her decision to handle the proceeding,

> including her repeated expressions of fondness for her former client and her misuse of her judicial position to benefit him, created an unmistakable appearance of favoritism. Her undisguised attempt to benefit the defendant by asking her clerk not to transfer the case to a particular judge whom respondent viewed as harsh was particularly improper (R34-35).

Petitioner's participation in mocking an alleged victim of sexual assault in *People v D.W.* is particularly egregious. By laughing repeatedly at a defense attorney's demeaning characterization of the alleged victim's delayed reporting as "buyer's remorse," Petitioner violated her obligation to be "dignified" and "courteous" to all with whom she deals in her official capacity. Rule 100.3(B) (3). But Petitioner did more than laugh. After the trial date was set and the ADA indicated the People were ready for trial, Petitioner gratuitously returned to the joke, saying she thought it was "freakin' hilarious" (R1083). When the ADA made a face indicating she found the joke inappropriate, Petitioner did not back down,

saying "I thought it was funny. She didn't think it was funny" and "She was offended. I thought it was hilarious" (R593-97, 1083).

In *People v T.L.*, notwithstanding that she had reason to believe the defendant might be suffering from mental illness (R625), Petitioner joked with a sheriff's deputy that he should "tase," "shoot," "billy-club," or "punch" the young defendant, adding, "You can't take a 16-year-old?" (R19). And in *People v D.Y.*, Petitioner suggested that she wanted to "run [people] over" who walked in front of her car (R20).

These additional acts of misconduct, while clearly less egregious than the conduct related to her DWI, nonetheless paint a picture of judge with poor impulse control who lacks a judicial temperament. Her indecorous and inappropriate comments, particularly in *People v D.W.,* "undermined … the stature and dignity of petitioner's court and the judicial system as a whole." *Matter of Assini,* 94 NY2d 26, 29 (1999).

C. Petitioner still does not accept responsibility for her actions.

"Petitioner's misconduct is compounded by [her] failure to recognize these breaches of our ethical standards and the public trust." *Matter of Ayres,* 30 NY3d 59, 65 (2017). As the Commission found, Petitioner

> has continued to insist that she was not intoxicated at the time of her arrest and has attributed most of her behavior not to her own poor choices

> and poor judgment, but to various external factors and the stresses of coping with her unfair treatment by the court system and court administration and with the excessive attention of news media. Although she expressed some remorse at the oral argument, stating that "in retrospect" she "would do a lot of things differently," she repeatedly showed little or no recognition of her personal responsibility for the consequences of her actions (R39).

Petitioner similarly shows little or no recognition of personal responsibility in her brief to this Court. Most significantly, nowhere in her discussion of her inappropriate conduct with respect to Charge I does Petitioner acknowledge that she was intoxicated when she drove her car on February 13, 2016 (Br 34). It is damning that Petitioner continues to insist in this Court that she was not intoxicated, as she did before the Commission (R65-66), in the face of overwhelming evidence to the contrary.[13]

While Petitioner is now willing to concede it was "inappropriate" to be "verbally abusive" to Trooper Kowalski, she continues to insist, as she did before the Commission (R39), that her belligerent, expletive-filled behavior was "provoked" by the actions of the troopers (Br 34).

---

[13] She was involved in a one-car accident that caused "heavy front-end damage" to her car (R137, 140, 660-61). Immediately after the accident, she pulled over and fell asleep (R7, 390). When Trooper Kowalski approached, she did not know she'd been in an accident and had no explanation for the damage (R141, 145-46, 203, 664, 719). Two experienced NYS Troopers who had been trained in DWI detection smelled the odor of alcohol and concluded she was intoxicated. (R155, 259). Her conviction after a bench trial (R683, 816-25), was upheld on appeal (R1089-98) after Petitioner had a "full and fair opportunity" to litigate the issue (R29).

Nor does Petitioner accept responsibility for her decision to try and drive after consuming "four glasses of wine and three shots" of tequila, knowing that she "was drunk" and "shouldn't be driving" (R16, 32-33, 516-17). In her brief to the Court, she accepts responsibility only for "not [reading] the conditional discharge carefully" and being "unaware that she was under an order not to consume alcohol" (Br 35). But that dubious explanation, even if true, misses the point. No citizen, least of all a judge, needs to be told it's wrong to "attempt[] to start and operate her vehicle despite knowing that she was impaired by alcohol" (R32). It is striking that Petitioner offers no apology for doing just that.

While ostensibly acknowledging that her comments in response to a defense counsel's joke about a victim of sexual assault were "inappropriate" (Br 20, 36), Petitioner offers by way of mitigation a self-serving explanation that is plainly at odds with the facts (Br 20, 36). There is simply no support in the record for Petitioner's claim that her comments were an "attempt[] to explain her inappropriate laugh" (Br 20). To the contrary, the record shows that Petitioner enjoyed the joke and gratuitously returned to it minutes later of her own accord (R1075-84).

Finally, Petitioner continues to evade responsibility for her second violation of the terms of her conditional discharge, which resulted entirely from her precipitous decision to leave the country without notice. Notwithstanding that her

conviction was affirmed on appeal by the Monroe County Court (R25), and her application for leave to this Court was denied, 2018 WL2939567, Petitioner maintains that the trial court's decision was "inferential" and unsupported by any authority (Br 28, 38).

Petitioner's "failure to recognize and admit wrongdoing strongly suggests … we may expect more of the same" *Matter of Bauer*, 3 NY3d 158, 165 (2004).

D. Petitioner's egregious misconduct both on and off the bench over a period of years mandates her removal from office.

In evaluating a judge's unethical conduct, this Court has stated that "[b]ecause 'relatively slight improprieties subject the judiciary as a whole to public criticism and rebuke,' it is essential to consider 'the effect of the Judge's conduct on and off the Bench upon public confidence in his [or her] character and judicial temperament'" *Matter of Aldrich v. State Commn. on Jud. Conduct*, 58 NY2d 279, 283 (1983) *citing Matter of Quinn,* 54 NY2d 386, 392 (1981). *See also Matter of Hedges*, 20 NY3d 677, 680 (2013).

Here, Petitioner's "notorious involvement with the law over a span of several years can only have resulted in irretrievable loss of public confidence in [her] ability to properly carry out [her] judicial responsibilities." *Matter of Quinn,* 54 NY2d 386, 392 (1981). She should be removed from judicial office.

CONCLUSION

By reason of the foregoing, it is respectfully submitted that this Court should accept the Commission's determination that Petitioner has engaged in judicial misconduct and should be removed from office.

Dated: July 13, 2018
Albany, New York

Respectfully submitted,

ROBERT H. TEMBECKJIAN
Administrator and Counsel to the
Commission on Judicial Conduct

By: _____
Edward Lindner
Deputy Administrator
Corning Tower, 23rd Floor
Empire State Plaza
Albany, New York 12223
(518)453-4613

Of Counsel:
John J. Postel, Esq.
David M. Duguay, Esq.

CERTIFICATION PURSUANT TO RULE 500.13 (C) (1)

I certify that this brief was prepared using Microsoft Word 2013 and that the total word court for the body of the brief is 13,364 words.

_____
Edward Lindner