NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

ROBERT H. TEMBECKJIAN
ADMINISTRATOR & COUNSEL

400 ANDREWS STREET, SUITE 700
ROCHESTER, NEW YORK 14604

585-784-4141 585-232-7834
TELEPHONE FACSIMILE
www.cjc.ny.gov

JOHN J. POSTEL
DEPUTY ADMINISTRATOR

M. KATHLEEN MARTIN
DAVID M. DUGUAY
SENIOR ATTORNEYS

STEPHANIE A. FIX
STAFF ATTORNEY

CONFIDENTIAL

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VIA EMAIL [redacted]@[redacted].gov
AND UPS NEXT DAY AIR
Jean M. Savanyu, Esq.
Clerk of the Commission
Commission on Judicial Conduct
61 Broadway, Suite 1200
New York, New York 10006

Re: *Matter of Leticia D. Astacio*

Dear Ms. Savanyu:

Please accept this letter as Commission Counsel's Reply to Respondent's Brief. As discussed below and in our main brief, Respondent's egregious misconduct both on and off the bench over a period of years mandates her removal from office.

Notwithstanding voluminous record evidence to the contrary, Respondent continues to argue that:

- she was "cooperative with the Commission investigation and answered all questions raised with candor and truthfulness" (Resp Br 16)[1];

[1] "Resp Br" refers to Respondent's Brief to the Commission. "Tr" refers to the transcript of the hearing before the Referee. "Ex" and "Resp Ex" refer to Commission and Respondent hearing exhibits, respectively. The Referee's Report is cited as "Rep" followed by the page number and paragraph number whenever applicable.

- "[i]t was not proven by a preponderance of the evidence ... that she was driving under the influence of alcohol" (Resp Br 16, 18) on February 13, 2016;

- "she did not use the prestige of her office at the Troopers' barracks in violation of the Rules of Judicial Conduct" (Resp Br 19);

- her "conduct of coarse language was provoked and therefore she did not violate any of the charged rules regarding her conduct either in the Trooper vehicle or at the Trooper barracks by virtue of the provocation" (Resp Br 17, 19, 23); and

- she "returned promptly" from Thailand once notified by counsel of a court order to submit to a random alcohol test or appear in court (Resp Br 36).

Respondent made all of the above arguments to the Referee, who soundly rejected them. Respondent's continued insistence that she did nothing wrong is further evidence that she is unfit for judicial office.

I. Respondent made evasive and inconsistent statements about her use of alcohol. She refuses to acknowledge that she drove while under the influence and to accept responsibility for her criminal conduct.

Respondent's assertion that she was "cooperative with the Commission investigation and answered all questions raised with candor and truthfulness" (Resp Br 16) is simply not accurate. Respondent's sworn testimony during the investigation on the critical issue of when she last consumed alcohol before her arrest was directly contradicted by record evidence.

As the Referee found, Respondent testified under oath during the Commission's investigation that she did not consume alcohol after 10:00 PM on February 12, 2016 (Rep 11 ¶36; Tr 324). When speaking with Mr. Catalano on the morning of February 13th, she told him that she had not consumed any alcohol the night before (Rep 11¶ 36; Tr 332). At the hearing, however, Respondent conceded that a counselor she consulted for a chemical dependence evaluation reported that on March 24, 2016 – just 6 weeks after her arrest – Respondent

stated that she started drinking wine on February 12th at or after 10:30 PM and was unsure when she finished (emphasis added) (Rep 11 ¶36; Resp Ex C).

Even more troubling is Respondent's claim – despite her criminal conviction and an abundance of hearing evidence – that "[p]roof was not presented in this proceeding by a preponderance of the evidence that she violated the Rules by driving under the influence of alcohol" (Resp Br 18). As the Referee found, Respondent was convicted after trial of driving while intoxicated (Rep 10 ¶ 33; Exs 17, 26), a finding upheld on appeal (Rep 10 ¶34; Ex 86) after Respondent had a "full and fair opportunity" to litigate the issue (Rep 11 ¶35).[2]

The Referee also independently found – based on his own fact-finding in this proceeding – that Respondent drove her vehicle while intoxicated (Rep 12-13 ¶42; Exs 17, 26, 86). Respondent's continuing denial that she drove while intoxicated, despite being "found in her car on the side of the road ... unable to explain why her car had two flat tires and part of her front bumper missing, had an odor of an alcoholic beverage, bloodshot, watery, and glassy eyes and slurred speech" (Rep 12-13 ¶42) demonstrates a shocking inability to accept responsibility for her actions.

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[2] Respondent's citation to *Matter of Mills,* 2006 Ann Rep 218 (Commn on Jud Conduct, August 17, 2005) for the proposition that the Commission can disregard Respondent's criminal conviction (Resp Br 20) is wrong on the facts and the law. First, the Commission's determination in *Mills* was not at odds with a jury verdict acquitting the judge of driving while intoxicated. The Commission did not find that she drove under the influence; the *Mills* censure was based on the judge's admission that it was inappropriate to drive after consuming numerous alcoholic drinks and to make offensive remarks to the arresting officers. Second, the Commission is never bound by a criminal court acquittal, since a determination that guilt was not established beyond a reasonable doubt in a criminal proceeding cannot preclude a Commission finding based on a preponderance of the evidence. *Matter of Nora S. Anderson*, 2013 Ann Report 75 (Comm on Jud Conduct, October 1, 2012) (judge censured after acquittal); *see also, Matter of Jerome D. Cohen,* 74 NY2d 272 (1989), where the judge was removed after acquittal. Here, however, the fact that in city court, Respondent was found guilty of DWI *beyond a reasonable doubt* – a standard of proof manifestly higher than the *preponderance* standard applicable to the Commission – and that the verdict was upheld on appeal – is dispositive.

II. Respondent asserted her judicial status in an effort to avoid arrest. Her attempt to blame the State Police for her inexcusably rude and profane conduct is further evidence of her inability to accept responsibility for her actions.

The Referee properly rejected Respondent's claim that her statements at the State Police barracks were "appropriate" and made "to persuade the State Police to allow her to call City Court to advise that she could not do arraignments" (Resp Br 16). In considering Lt. Lupo's contemporaneous notes and crediting his testimony that he "understood her remarks to mean that she did not want to be arrested or to proceed with the arrest process (Tr 145)" (Rep 14 ¶47), the Referee found that Respondent's "comments to Lt. Lupo when she asked him to 'please don't do this' because 'I have arraignments' and 'I have court right now' were an attempt to advance her private interests in connection with her arrest for driving while intoxicated" (Rep 15 ¶52).

Respondent's assertion that her profane and offensive 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 21) is contradicted by the record. As the record clearly shows, Respondent's first offensive statement suggesting that Trooper Kowalski was going to shoot her came shortly after she entered the Trooper's car and her vulgarity to him and Trooper Dolan began not long after (Rep 5-6, ¶¶ 15-16; Tr 21, 24,74, 76-78, 104; Exs 10, 12, 25).[3]

Moreover, as set forth in the Commission's main brief, pp 16-22, 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 (Tr 338-339) and cites nothing to support her assertion that the investigation should have been completed sooner. And she cannot rebut record evidence that the investigation was prolonged by her combativeness and evasiveness, which required the trooper to call for backup (Tr 24-25; Exs 10, 25).

Respondent's argument that it was "obviously an abuse" for Trooper Kowalski to handcuff her after her arrest, and that "provoked her verbal outburst"

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[3] The record shows that Trooper Kowalski arrived at the scene at 7:54 AM (Rep 2, ¶3). Respondent's remark about the Trooper shooting her occurred shortly after 8:15 AM (Rep 5-6, ¶¶15-16).

(Resp Br 13, 14), 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 maintain those handcuffs 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.

Respondent's claim that Trooper Kowalski "played mind games" and that "she received this treatment, unfair and cruel, because she is a Judge" (Resp Br 23), 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 9, 15, 19, 25).[5] 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).

III. Respondent made no effort to comply with Judge Aronson's order to obtain an EtG test or appear in court.

Respondent's claim that she promptly returned home from Thailand (Resp Br 36, 37) is simply untrue. The record makes clear that Respondent did not comply with Judge Aronson's order to obtain an EtG lab test[6] or appear in his court, a directive she acknowledged learning about at approximately 4:30 PM EST

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[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).

[5] 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).

[6] Respondent's allegation that Judge Aronson knew she was in Thailand when he ordered her to take the EtG test (Resp Br 38) is without support in the record. To the contrary, the record shows that when Respondent's counsel stated in court that his client was in Thailand, Judge Aronson immediately asked, "When did she go and when is she expected to return?" (Ex 47, p 2).

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 order "all moot anyway" (Tr 311) and 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.

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). Yet when her attorney advised her of Judge Aronson's order, she did not board a plane in Thailand until June 3, 2017 (Tr 396), eight days later. As the Referee correctly found, "[o]n or about May 30, 2017, Judge Astacio violated the terms of the conditional discharge imposed in connection with her conviction of driving while intoxicated in August 2016" (Rep 30 ¶119).

By reason of the foregoing, and as more fully explained in Commission Counsel's main brief, it is respectfully submitted that the Commission should confirm the Referee's findings of fact and conclusions of law and render a determination that Respondent be removed from office.

Respectfully submitted,

Robert H. Tembeckjian
Administrator and Counsel to the
Commission on Judicial Conduct

By: _____
John J. Postel, Esq.
Deputy Administrator
400 Andrews Street, Suite 700
Rochester, New York 14604
(585) 784-4141

cc: Robert F. Julian, Esq.
(VIA EMAIL [redacted]@[redacted].com AND MAIL)