

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

LETICIA D. ASTACIO,

a Judge of the Rochester City Court,
Monroe County.

**NOTICE OF FORMAL
WRITTEN COMPLAINT**

NOTICE is hereby given to Respondent, Leticia D. Astacio, a Judge of the Rochester City Court, Monroe County, pursuant to Section 44, subdivision 4, of the Judiciary Law, that the State Commission on Judicial Conduct has determined that cause exists to serve upon Respondent the annexed Formal Written Complaint; and that, in accordance with said statute, Respondent is requested within twenty (20) days of the service of the annexed Formal Written Complaint upon her to serve the Commission at its Rochester office, 400 Andrews Street, Suite 700, Rochester, New York 14604, with her verified Answer to the specific paragraphs of the Complaint.

Dated: May 30, 2017
New York, New York

ROBERT H. TEMBECKJIAN
Administrator and Counsel
State Commission on Judicial Conduct
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STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

**FORMAL
WRITTEN COMPLAINT**

LETICIA D. ASTACIO,

a Judge of the Rochester City Court,
Monroe County.

1. Article 6, Section 22, of the Constitution of the State of New York establishes a Commission on Judicial Conduct (“Commission”), and Section 44, subdivision 4, of the Judiciary Law empowers the Commission to direct that a Formal Written Complaint be drawn and served upon a judge.

2. The Commission has directed that a Formal Written Complaint be drawn and served upon Leticia D. Astacio, (“Respondent”), a Judge of the Rochester City Court, Monroe County.

3. The factual allegations set forth in Charges I through V state acts of judicial misconduct by Respondent in violation of the Rules of the Chief Administrator of the Courts Governing Judicial Conduct (“Rules”).

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

CHARGE I

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

Specifications to Charge I

6. On or about February 13, 2016, at approximately 7:54 AM, while on patrol traveling westbound on Interstate 490 in Rochester, New York, New York State Police Trooper Christopher Kowalski came upon a stationary 2008 Hyundai Veracruz on the shoulder of Interstate 490. The car engine was running. Both the front driver-side and front passenger-side windows were completely down, both the front and rear driver-side tires were flat, and there was visible collision damage to the front of the vehicle. Trooper Kowalski exited his patrol car and approached Respondent, who was the sole occupant of the Hyundai and was sitting in the driver's seat.

7. Trooper Kowalski asked Respondent about the damage to her vehicle, to which Respondent replied in words or substance, "I don't recall hitting anything. I just have a flat tire."

8. Respondent provided no further explanation to Trooper Kowalski about the damage to the vehicle at any time on February 13, 2016.

9. Respondent was unable to produce her driver's license or vehicle registration and was directed by Trooper Kowalski to the rear seat of his vehicle. Once inside, Respondent complied with Trooper Kowalski's request to remove gum from her mouth and deposit it outside of the vehicle.

10. Trooper Kowalski observed that Respondent's speech was mumbled, her eyes appeared bloodshot and glassy, and a strong odor of an alcoholic beverage emanated from her breath. Respondent responded to Trooper Kowalski's inquiry about whether she had consumed any alcoholic beverages by stating in words or substance, "I've drank in my lifetime."

11. Respondent passed two standard field sobriety tests administered by Trooper Kowalski, the alphabet and counting tests. Respondent refused to attempt any other standard field tests citing a brain injury.

12. Respondent responded to Trooper Kowalski's repeated inquiry about whether she had consumed any alcoholic beverage by stating in words or substance:

- A. "I don't have to talk to you. You're making me feel uncomfortable."
- B. "I don't feel comfortable in this car."
- C. "I don't know if you're going to shoot me."

13. After New York State Police Trooper Casey Dolan appeared on the scene, he advised Respondent that it appeared she had been involved in a motor vehicle accident and that Trooper Kowalski had an obligation to request she submit to a portable breath test. Respondent responded to Trooper Dolan by stating in words or substance, "No he doesn't. He can just go and mind his own fucking business."

14. Respondent later submitted to a portable breath test, the result of which Trooper Kowalski deemed to provide additional reasonable cause for Respondent's arrest.

15. Prior to being transported from the site of her arrest, Respondent commented to Trooper Kowalski about her operation of the vehicle by stating in words or substance, “I wasn’t driving. You didn’t see me drive.”

16. While under arrest and en route to the State Police barracks in Trooper Kowalski’s vehicle, Respondent made the following statements, in words or substance:

- A. “I can’t believe you’re doing this to me. You’re fucking ruining my life.”
- B. “You don’t have to do this. This isn’t part of your job.”
- C. “Why are you fucking doing this to me? I would never do this to you.”

17. At the State Police barracks, Respondent refused to submit to a chemical breath test.

18. On or about February 13, 2016, Respondent was charged with three Vehicle and Traffic Law (VTL) offenses: a misdemeanor for driving while intoxicated, pursuant to VTL Section 1192(3); a traffic infraction for no stopping/standing/parking, pursuant to VTL Section 1201(a); and a traffic infraction for unsafe tire, pursuant to VTL Section 375(35)(c).

19. On or about August 15, 2016, Canandaigua City Court Judge Stephen D. Aronson sat as an acting judge of Rochester City Court and presided over a non-jury trial concerning Respondent’s VTL charges. Judge Aronson reserved decision on a verdict.

20. On or about August 22, 2016, Judge Aronson found Respondent guilty of driving while intoxicated, in violation of VTL Section 1192(3). The remaining charges were dismissed.

21. By reason of the foregoing, Respondent should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law, in that Respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules; failed to avoid impropriety and the appearance of impropriety, in that she failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules; and failed to so conduct her extra-judicial activities as to minimize the risk of conflict with judicial obligations, in that she failed to conduct her extra-judicial activities so that they do not detract from the dignity of judicial office, in violation of Section 100.4(A)(2) of the Rules.

CHARGE II

22. On or about February 13, 2016, Respondent repeatedly asserted and/or attempted to assert her judicial office to advance her private interests in connection with her arrest for driving while intoxicated.

Specifications to Charge II

23. On or about February 13, 2016, at approximately 7:54 AM, Respondent was approached by New York State Police Trooper Christopher Kowalski while she was behind the wheel of a damaged and disabled vehicle, which was stopped with its engine running on the westbound shoulder of Interstate 490 in Rochester, New York.

24. Respondent responded to Trooper Kowalski's inquiry about whether she had consumed alcohol and where she was driving to by stating in words or substance, "I'm going to city court to do the arraignments at 9:30 this morning."

25. Rochester City Court was east of Respondent's location. Respondent had been traveling in a westerly direction, away from the courthouse.

26. While being processed by Trooper Kowalski at the State Police barracks pursuant to her arrest, Respondent stated in words or substance, "Please don't do this. I have to go to work. I have arraignments. I have court right now."

27. By reason of the foregoing, Respondent should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law, in that Respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules; failed to avoid impropriety and the appearance of impropriety, in that she failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules, and lent the prestige of judicial office to advance her own private interests, in violation of Section 100.2(C) of the Rules; and failed to so conduct her extra-judicial activities as to minimize the risk of conflict with judicial obligations, in that she failed to conduct her extra-judicial activities so that they do not detract from the dignity of judicial office, in violation of Section 100.4(A)(2) of the Rules.

CHARGE III

28. On or about October 3, 2016, following her conviction in August 2016 for Driving While Intoxicated, Respondent violated the terms of her sentence to a conditional discharge when, in attempting to start and operate her motor vehicle, she:

- A. provided a breath sample for her ignition interlock device (IID) that registered a blood alcohol content (BAC) of approximately .078%; and
- B. failed to perform an IID start-up re-test.

Specifications to Charge III

29. On or about August 22, 2016, Respondent was sentenced in Rochester City Court by the Honorable Stephen D. Aronson to a one-year conditional discharge as a result of being convicted of driving while intoxicated.

30. At her sentencing on or about August 22, 2016, Respondent signed and received a copy of her “Conditions of Conditional Discharge.” The document provided in boldface type near the top of the first page that Respondent was to “**Abstain from Alcoholic Beverages and All Products That Contain Alcohol.**”

31. Respondent was also required as a condition of her conditional discharge to install and maintain a functioning IID in any vehicle she operated and comply with all conditions of the IID as set forth in the document.

32. On or about October 11, 2016, Judge Aronson signed a Declaration of Delinquency that alleged Respondent had violated her conditional discharge by failing an IID start-up test on September 12, 2016, at 7:31 AM, with a BAC of .067%.

33. On or about November 3, 2016, Judge Aronson signed a Declaration of Delinquency that alleged Respondent had violated her conditional discharge by failing an IID start-up test on October 3, 2016, at 9:37 AM, with a BAC of .078%.

34. On or about November 16, 2016, Respondent pleaded guilty to attempting to start and operate her vehicle on October 3, 2016, while testing positive for alcohol with a .078% BAC and thereafter failing to perform an IID start-up re-test. Respondent's plea satisfied the outstanding Declaration of Delinquency dated October 11, 2016.

35. By reason of the foregoing, Respondent should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law, in that Respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules; failed to avoid impropriety and the appearance of impropriety, in that she failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules; and failed to so conduct her extra-judicial activities as to minimize the risk of conflict with judicial obligations, in that she failed to conduct her extra-judicial activities so that they do not detract from the dignity of judicial office, in violation of Section 100.4(A)(2) of the Rules.

CHARGE IV

36. On or about January 21, 2015, Respondent failed to disqualify herself from presiding over the arraignment of *People v James Thomas*, notwithstanding that her

impartiality might reasonably be questioned, *inter alia* because of her prior attorney-client relationship with the defendant.

Specifications to Charge IV

37. On or about January 21, 2015, Respondent was scheduled to preside over the arraignment of *People v James Thomas*. Mr. Thomas was in custody and charged with a misdemeanor for petit larceny, pursuant to Penal Law Section 155.25.

38. Respondent had represented Mr. Thomas as his defense attorney approximately three years earlier on a felony charge related to a highly-publicized jail escape matter involving a number of co-defendants and a locally prominent, long-practicing attorney. Respondent represented Mr. Thomas for approximately one year and had visited him approximately two dozen times at the county jail during that period. Mr. Thomas ultimately pleaded guilty to a felony charge and was sentenced to state prison. Mr. Thomas was on parole supervision when he appeared before Respondent on or about January 21, 2015.

39. On or about January 21, 2015, when Mr. Thomas was brought by Sheriff's Department personnel into Respondent's courtroom, he smiled and waved at Respondent, who was on the bench. Respondent laughed and then disclosed to counsel that Mr. Thomas was a former client. Respondent told counsel that she "like[d] him" and that she was going to transfer his case.

40. Pursuant to standard practice and procedure, Mr. Thomas' case would have been transferred to the judge following Respondent in the Rochester City Court rotation.

On or about January 21, 2015, the judge in the rotation behind Respondent was the Supervising Judge of Rochester City Court, Teresa D. Johnson.

41. Respondent perceived that Judge Johnson was harsh with regard to sentencing defendants. Speaking to her court clerk, Respondent asked, "Can it not go to Johnson, please?" Respondent's clerk then made inquiries to determine whether the case had to be transferred to Judge Johnson.

42. Prior to confirming the judge to whom Mr. Thomas's case would be transferred, Respondent made the following comments from the bench:

- A. "When ... you said the name I'm like, 'Aw, come on.'"
- B. "He freaking just got out. I represented him ... He just, just got out."
- C. "Aww, I'm so sad about this."
- D. "I wish, I wish ... I could make him approach."

43. After learning from her court clerk that Mr. Thomas's case would be transferred to Judge Stephen T. Miller for the following morning's calendar, Respondent read Mr. Thomas his charge and appointed counsel who entered a plea of not guilty on his behalf. Respondent advised Mr. Thomas, "It's not appropriate for me to preside over your case."

44. Mr. Thomas questioned why Respondent could not preside over his case and stated that he would plead guilty. Respondent replied, "I would love to preside over your case, but I don't ... want any conflicts."

45. Respondent indicated that Judge Miller would continue Mr. Thomas' arraignment and stated, "I will defer to Judge Miller -- with respect to bail." When Mr.

Thomas' counsel thereafter requested that Respondent set a "courtesy \$50 bail" since he was being held by parole at that time, Respondent complied, stating:

- A. "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...."
- B. "But I'll hold you, so you're getting time on these charges."

46. Mr. Thomas told Respondent that the Public Defender "was good, but you were the best." Respondent replied, "I appreciate that, Mr. Thomas," and told him to "Stay out of jail." Respondent then commented, "I totally love him. I'm so sad that he's in jail right now."

47. By reason of the foregoing, Respondent should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law, in that Respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules; failed to avoid impropriety and the appearance of impropriety, in that she failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules; and failed to perform the duties of judicial office impartially and diligently, in that she failed to disqualify herself in a proceeding in which her impartiality might reasonably be questioned due to a personal bias or prejudice concerning a defendant, in violation of Section 100.3(E)(1)(a)(i) of the Rules.

CHARGE V

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

Specifications to Charge V

People v T [REDACTED] L [REDACTED]

49. On or about January 27, 2015, Respondent was scheduled to preside over the arraignment of T [REDACTED] L [REDACTED]. Ms. L [REDACTED] was in custody, charged with a misdemeanor for criminal trespass in the third degree, pursuant to Penal Law Section 145.10(a).

50. Prior to calling Ms. L [REDACTED]'s case, Respondent learned from her clerk that Ms. L [REDACTED] was allegedly biting and spitting on people. Respondent had also heard that Ms. L [REDACTED] may have been cursing, kicking and punching sheriff deputies.

51. Respondent, speaking from the bench with a Sheriff's Deputy about Ms. L [REDACTED] stated, "I heard she's going crazy." While speaking with the deputy about transporting Ms. L [REDACTED] to court, Respondent made the following remarks:

- A. "Well, tase her."
- B. "Shoot her?"
- C. "What do you do, billy-club people?"
- D. "Well, punch her in the face and bring her out here. You can't take a 16-year-old?"
- E. "What do you want me to do, leave her? I don't like her attitude."
- F. "She needs a whoopin'."

G. “Is she crazy or is she bad?”

52. Respondent did not arraign Ms. L [REDACTED] on January 27, 2015, and held her without bail.

53. On or about January 30, 2015, Respondent arraigned Ms. L [REDACTED] and released her on her own recognizance. The court file cover sheet for the arraignment includes the note “ROR-St. Mary’s,” and the court file contains a letter from Strong Memorial Hospital in Rochester, New York, indicating that Ms. L [REDACTED] was admitted to the hospital on February 8, 2015.

54. On or about February 26, 2015, upon motion of defense counsel, Respondent dismissed the charge against Ms. L [REDACTED] on the grounds that the accusatory instrument was defective.

People v X [REDACTED] V [REDACTED]

55. On or about January 28, 2015, Respondent presided over the arraignment of X [REDACTED] V [REDACTED], a 17-year-old high school student. Mr. V [REDACTED] was charged with a misdemeanor for criminal diversion of prescription medications and prescriptions in the fourth degree, pursuant to Penal Law Section 178.10, and a violation for unlawful possession of marihuana, pursuant to Penal Law Section 221.05. Mr. V [REDACTED] allegedly engaged in the charged criminal conduct at his high school.

56. Respondent read Mr. V [REDACTED] the charges against him, noted that her daughter attended the same school, and commented, “[I]t’s one of the best schools in the city. I don’t think you went there to peddle prescription drugs, right?”

57. Respondent, who had earlier identified Mr. V [REDACTED]'s mother and thanked her for being present, commented:

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

58. On or about February 17, 2015, Respondent granted Mr. V [REDACTED] an adjournment in contemplation of dismissal (ACD) in accordance with Criminal Procedure Law Section 170.55, conditioned upon Mr. V [REDACTED] performing 24 hours of community service. On or about April 21, 2015, Respondent determined that Mr. V [REDACTED] had satisfied the condition of the ACD.

People v D [REDACTED] Y [REDACTED]

59. On or about August 15, 2015, Respondent presided over the arraignment of D [REDACTED] Y [REDACTED]. Mr. Y [REDACTED] was in custody, charged with a violation for disorderly conduct, pursuant to Penal Law Section 240.20(5).

60. Respondent read Mr. Y [REDACTED] the charge against him and advised counsel that Mr. Y [REDACTED] had charges pending elsewhere in Rochester City Court and was scheduled for a mental health examination pursuant to Criminal Procedure Law Article 730.

61. After the prosecutor announced that there was no plea reduction offer, Respondent stated she would sentence Mr. Y [REDACTED] to time served if he wished to plead guilty to the charge. Mr. Y [REDACTED] conferred with his counsel who advised Respondent that Mr. Y [REDACTED] would plead guilty.

62. Prior to accepting Mr. Y [REDACTED]'s plea, Respondent 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.”

63. Respondent accepted Mr. Y■■■■’s guilty plea and reduced his penalty assessment fee to judgment before stating, “Good luck, sir. Stay out of the street.”

People v D■■■■ W■■■■

64. On or about August 15, 2015, Respondent presided over the arraignment of D■■■■ W■■■■. Mr. W■■■■ was charged with a misdemeanor for sexual misconduct, pursuant to Penal Law Section 130.20(1).

65. Respondent informed Mr. W■■■■ of the pending charge and stated that she was issuing an order of protection against him and in favor of the alleged victim. Respondent explained to Mr. W■■■■ that he was to have no contact with the alleged victim. Respondent recalled that she had signed an arrest warrant for Mr. W■■■■ in the pending matter, and that Mr. W■■■■ and the alleged victim attended school together.

66. When the defense attorney characterized the alleged victim’s delay in signing a statement against Mr. W■■■■ as “buyer’s remorse,” Respondent laughed and commented to the Assistant District Attorney, “That was funny. You didn’t think that was funny[?]”

67. Following Mr. W■■■■’s arraignment, Respondent continued commenting about the defense attorney’s “buyer’s remorse” remark, stating:

A. “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.”

- B. “Yeah, I thought it was funny. She didn’t think it was funny.”
- C. “She was offended, I thought it was hilarious.”

68. By reason of the foregoing, Respondent should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law, in that Respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules; failed to avoid impropriety and the appearance of impropriety, in that she failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules; and failed to perform the duties of judicial office impartially and diligently, in that she failed to be patient, dignified and courteous to litigants, lawyers and others with whom she dealt in an official capacity, in violation of Section 100.3(B)(3) of the Rules.

WHEREFORE, by reason of the foregoing, the Commission should take whatever further action it deems appropriate in accordance with its powers under the Constitution and the Judiciary Law of the State of New York.

Dated: May 30, 2017
New York, New York



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