

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

ERIK P. JACOBSEN,

a Justice of the Bedford Town Court,
Westchester County.

AGREED
STATEMENT OF FACTS

Subject to the approval of the Commission on Judicial Conduct

("Commission"):

IT IS HEREBY STIPULATED AND AGREED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission, and Honorable Erik P. Jacobsen ("Respondent"), who is represented in this proceeding by Peter Gerstenzang, of Gerstenzang, Sills, Cohn & Gerstenzang, that further proceedings are waived and that the Commission shall make its determination upon the following facts, which shall constitute the entire record in lieu of a hearing.

1. Respondent was admitted to the practice of law in New York in 1994. He has been a Justice of the Bedford Town Court, Westchester County, since 2010. His current term expires on December 31, 2021. As noted below, Respondent is not running for re-election and will vacate judicial office when his term expires.

2. In addition to his service as a judge, which is a part-time position, Respondent is engaged in the practice of law, with an office in Bedford, New York.

3. Respondent was served with a Formal Written Complaint dated June 22, 2021. He enters into this Agreed Statement of Facts in lieu of filing an answer.

As to Charge I

4. On April 22, 2019, in the Village of Mount Kisco, New York, Respondent operated his motor vehicle while under the influence of alcohol and refused to cooperate with police officers from the Westchester County Department of Public Safety after they stopped his car and attempted to arrest him for Driving While Intoxicated.

As to the Specifications to Charge I

5. In the late evening hours of April 21, 2019, into the early morning hours of April 22, 2019, Respondent drove his car from Yonkers, New York, to Mount Kisco, New York, after voluntarily consuming a number of alcoholic beverages.

6. At around the same time, the Westchester County Department of Public Safety received a 911 call reporting that a silver Mercedes-Benz was driving erratically on the Saw Mill River Parkway, near Mount Kisco. The car belonged to Respondent.

7. Westchester County Police Officers Ahmid Bitawi and Mathieu Ricozzi drove to the area, where they observed Respondent's silver Mercedes-Benz exit the Parkway at Kisco Avenue and cross into the incoming lane of traffic before returning to the correct lane of travel. Shortly thereafter, Respondent's car stopped underneath a red traffic light, atop the crosswalk and in a left-turn-only turning lane, then proceeded straight when the light turned green. Officer Bitawi activated his vehicle's emergency lights and siren and pulled over Respondent's car in the vicinity of 90 South Bedford Road.

8. Upon approaching Respondent's car, Officer Bitawi observed Respondent, the sole occupant, behind the wheel. Officer Bitawi informed Respondent that he had passed a red light, and he requested Respondent's driver's license and vehicle registration. Respondent handed the officer his license and pointed to a registration sticker on his windshield, stating that he did not have a registration card with him.

9. In conversing with Respondent, Officer Bitawi detected a strong odor of alcohol on his breath and observed that he had red glassy eyes and was slurring his speech. Officer Bitawi asked Respondent if he had been drinking that night, and Respondent said that he had not.

10. Officer Bitawi asked Respondent several times to get out of his car but Respondent refused, stating "no" and "no I will not." When Officer Bitawi informed Respondent he could remove him from the car, Respondent stated "you can if you want but I will not."

11. Officer Bitawi told Respondent that he smelled alcohol on his breath and Respondent stated, "you don't." Officer Bitawi asked Respondent how much he had to drink that night, and Respondent answered "nothing, thank you."

12. Officer Bitawi asked Respondent to get out of the vehicle again and Respondent stated, "No, I'm not stepping out of the vehicle. I've done nothing. I've given you my identification."

13. Officers Bitawi and Ricozzi both tried to pull Respondent from his vehicle but were unsuccessful. The officers informed Respondent that he was under arrest and repeatedly directed him to get out of the car, but Respondent held tightly to the steering

wheel and stated, “this is unbelievable,” “you’re going to have to hurt me,” “where’s my phone,” and “you’re making a big mistake.”

14. At that point, Officer Bitawi informed Respondent that he would be forced to discharge his taser unless Respondent complied. Respondent replied, “I’m doing nothing, you can’t tase me.”

15. The officers asked Respondent several more times to get out of the car. When Respondent continued to refuse, Officer Bitawi deployed his taser on Respondent. Thereafter, the officers pulled Respondent out of the car, placed him under arrest and took him to a hospital.

16. On April 22, 2019, hospital personnel drew three vials of blood from Respondent – one each at approximately 1:34 AM, 4:07 AM, and 7:56 AM. On April 26, 2019, a warrant to seize and search Respondent’s blood for analysis was issued. A toxicology specialist analyzed the three vials drawn at the hospital and found them to contain blood alcohol concentrations of .264%, .18% and .10%, respectively.

17. On June 4, 2019, Respondent appeared in Rye City Court¹ and was charged with a misdemeanor for Driving While Intoxicated, in violation of Vehicle and Traffic Law (VTL) Section 1192(3); a misdemeanor for Resisting Arrest, in violation of Penal Law Section 205.30; a traffic infraction for failing to stop while facing a red signal, in violation of VTL Section 1111(d)(1); and a traffic infraction for failure to use a designated lane, in violation of VTL Section 1128(c).

¹ The case against Respondent was transferred to Rye City Court after the Mt. Kisco Town Court justices recused themselves from the matter.

18. On October 31, 2019, a Superseding Information was filed charging Respondent with a misdemeanor for Obstructing Governmental Administration, in violation of Penal Law Section 195.05 and a misdemeanor for Resisting Arrest, in violation of Penal Law Section 205.30.

19. On August 25, 2020, Respondent appeared before Rye City Court Judge Joseph L. Latwin and pled guilty to Driving While Intoxicated, a misdemeanor, in violation of VTL Section 1192(3), in full satisfaction of all the charges.

20. On November 9, 2020, Judge Latwin sentenced Respondent to a one-year Conditional Discharge with a \$500 fine and a \$395 surcharge. Respondent was required to continue participating in private counseling and an attorney monitoring program and to attend the Victim Impact Panel, Impaired Driver's Program, and Alcoholics Anonymous. Respondent's driver's license was revoked for a period of six months and he was required to have an "Ignition Interlock Device" installed on his car for one year.

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 he failed to respect and comply with the law and failed to act in a manner that promoted public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules; and failed to conduct his extra-judicial activities so as to minimize

the risk of conflict with judicial obligations, in that he failed to conduct all of his 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.

Additional Factors

22. Respondent has no prior arrest history or history of alcohol or substance abuse.

23. At no time did Respondent invoke his judicial office or ask for any special consideration from any police officer, emergency service personnel or health care provider.

24. Respondent avers that the precipitating factor that led to his intoxication at the time of his arrest was the profound grief he experienced upon losing his wife of 15 years in February 2018, following her protracted battle with cancer. During the Commission's investigation, Respondent testified that he was actively involved in his wife's treatment to the extent that he disengaged from his law practice and that his only professional attention was to his judgeship. He further testified that, during her illness, he provided extensive home care to his wife while she endured a series of painful and failed treatments.

25. Respondent fully acknowledges that the emotional pain he felt at the time of his arrest does not in any way excuse or mitigate his decision to drive while intoxicated and to refuse to cooperate with police.

26. Respondent admits that, given the high level of his intoxication, he should not have been driving, and there is no excuse for his behavior toward the officers who

stopped and arrested him. Respondent describes his conduct at the time of his arrest as “shameful and deeply humiliating” and acknowledges that his criminal conviction and refusal to cooperate with the police – which was the product of his high level of intoxication – were inconsistent with the high standards of conduct that judges are required to observe.

27. In the wake of his arrest, Respondent – for the first time – sought extensive treatment to address his grief and depression. Respondent consulted with representatives from the New York State Judicial Wellness Committee and the New York City Bar Association Lawyers Assistance Program, who recommended an extensive series of treatments. Respondent sought the following treatments on his own, without court intervention:

- A. In May of 2019, Respondent voluntarily enrolled in Inter-Care, an outpatient alcohol and substance abuse treatment program that met twice weekly. Respondent successfully completed the program after attending 57 of 58 sessions and was discharged in November of 2019. In December of 2019, Respondent chose to enter Inter-Care’s Continuing Care program (which provides a lower level of care) and successfully completed that phase of the program in October of 2020 with a 100% attendance rate. During the entire course of treatment, Respondent received an individualized treatment plan designed to assist and support him and to enhance his coping skills to maintain ongoing recovery. Respondent also

provided random weekly toxicology samples, all of which came back negative (*see* Exhibit 1).

- B. Beginning in May of 2019, Respondent attended psychotherapy with a licensed clinical social worker. Based on this treatment, it was determined that Respondent's substance abuse disorder resulted from a continuing series of blows to both his and his deceased wife's hopes and expectations for their lives due to her illness, and which was aggravated upon her death. According to the social worker, Respondent was sober and abstinent from all alcohol since the time of his arrest in April 2019 through July 2021 and has achieved the highest level of remission according to DSM-5² standards (*see* Exhibits 2 and 3). Respondent avers that his treatment is ongoing.
- C. On August 1, 2019, Respondent joined Gilda's Club, a cancer support community, where he received individual bereavement therapy and attended a support group coordinated by a licensed social worker entitled, "Living with Loss." Respondent attended both programs for an aggregate period of approximately five months. Both programs ended on account of the Coronavirus pandemic (*see* Exhibit 4).
- D. Respondent avers that he continues to attend virtual Alcoholics Anonymous ("AA") meetings, as in-person meetings have been suspended due to the Coronavirus pandemic, and that he maintains contact with an AA sponsor;

² Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition

28. At the time sentence was imposed in Respondent's criminal case, the sentencing judge made the following remarks about Respondent:

"After the unfortunate events, the defendant seems to have affirmatively [sought] the help that he needed and seriously participated in...way more than the usual programs available to those with alcohol issues. He sought out, entered and completed an outpatient program and attended sessions religiously. He provided weekly samples and all tested negative. He then continued – he entered a continuing care program and maintained his sobriety. He also entered private counseling sessions and attended AA meetings. He also joined the monitoring program and signed the monitoring agreement. All of this was done on his own without Court intervention. This Court has not seen any other defendant do as much as this defendant."

29. Respondent acknowledges that he should have sought treatment before the incident occurred. He avers that the circumstances surrounding his arrest were a trigger for him to begin the process of addressing and recovering from the devastation of the loss of his wife.

30. Respondent avers that he has not consumed an alcoholic drink since April 22, 2019, and the Administrator has no information to the contrary. On August 12, 2020, three months prior to his sentencing, Respondent contracted with Start Smart to install and monitor Ignition Interlock Devices in each of his three cars, as well as provide and monitor a hand-held breath test device called the "BreathCheck." In accordance with his

sentence, respondent was also required by the sentencing judge to install an Ignition Interlock Device for six months, which he has opted to keep installed in his vehicles despite the expiration of the six-month mandate. He also continues to utilize the hand-held BreathCheck device, which requires him to provide breath samples at random times throughout the day.

31. Since his arrest, Respondent has resumed his law practice and entered a six-month training program to become certified as an Emergency Medical Technician, passing both hospital and New York State physical examinations. Respondent avers that he is completely committed to continuing his treatment and to absolute sobriety.

32. Respondent has been contrite and cooperative with the Commission throughout this inquiry and has expressed embarrassment and remorse for his behavior and any diminution of respect for the judiciary it may have caused.

33. Respondent recognizes that his conduct had the potential to put innocent lives at risk of death and serious injury.

34. Respondent has an otherwise unblemished record during his approximately 10 years on the bench.

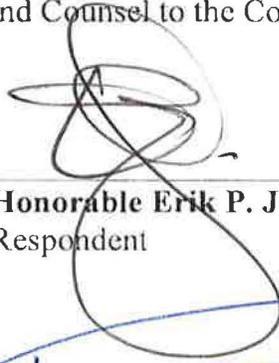
IT IS FURTHER STIPULATED AND AGREED that the parties to this Agreed Statement of Facts respectfully recommend to the Commission that the appropriate sanction is public Censure based upon the judicial misconduct set forth above.

IT IS FURTHER STIPULATED AND AGREED that Respondent is not running for re-election and will leave office at the expiration of his term on December 31, 2021.

IT IS FURTHER STIPULATED AND AGREED that if the Commission accepts this Agreed Statement of Facts, the parties waive oral argument and waive further submissions to the Commission as to the issues of misconduct and sanction, and that the Commission shall thereupon impose a public Censure without further submission of the parties, based solely upon this Agreed Statement. If the Commission rejects this Agreed Statement of Facts, the matter shall proceed to a hearing and the statements made herein shall not be used by the Commission, the Respondent or the Administrator and Counsel to the Commission.

Dated:

8/26/21



Honorable Erik P. Jacobsen
Respondent

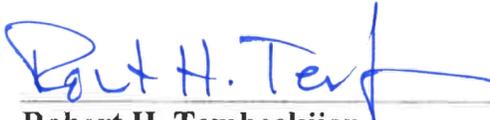
Dated:

8/29/21



Peter Gerstenzang, Esq.
Attorney for Respondent

Dated: August 30, 2021



Robert H. Tembeckjian
Administrator & Counsel to the Commission
(Mark Levine and Eric Arnone, Of Counsel)

Exhibits 1-4: Redacted Medical Records