

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.

DETERMINATION

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Jodie Corngold
Honorable John A. Falk
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Ronald J. Rosenberg, Esq.
Graham B. Seiter, Esq.
Akosua Garcia Yeboah

APPEARANCES:

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

Gerstenzang, Sills, Cohn & Gerstenzang (by Peter Gerstenzang) for
respondent

Respondent, Erik P. Jacobsen, a Justice of the Bedford Town Court, Westchester

County, was served with a Formal Written Complaint dated June 22, 2021, containing one charge. The Formal Written Complaint alleged that 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. Respondent filed a Verified Answer dated July 6, 2021.

On August 30, 2021, the Administrator, respondent's counsel and respondent entered into an Agreed Statement of Facts pursuant to Section 44, subdivision 5, of the Judiciary Law, stipulating that the Commission make its determination based upon the agreed facts, recommending that respondent be censured and waiving further submissions and oral argument.

On September 23, 2021, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent 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. Respondent was admitted to the practice of law in New York in 1994. 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. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.”

9. 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.”

10. 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.”

11. 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.”

12. 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.”

13. 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.

14. 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.

15. 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).

16. 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.

17. 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.

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

18. 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.

Additional Factors

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

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

- 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. 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.
- 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.

25. 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."

26. Respondent acknowledges that he should have sought treatment before the incident occurred. He avers that the circumstances surrounding his arrest were a trigger

² Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition

for him to begin the process of addressing and recovering from the devastation of the loss of his wife.

27. 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.

28. 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.

29. 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.

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

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

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A) and 100.4(A)(2) of the Rules Governing Judicial Conduct (“Rules”) and should be disciplined for cause pursuant to Article VI, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law. Charge I of the Formal Written Complaint is sustained insofar as it is consistent with the above findings and conclusions and respondent’s misconduct is established.

It is the responsibility of every judge to act at all times in a manner that promotes public confidence in the integrity of the judiciary and to avoid conduct that detracts from the dignity of judicial office. Respondent violated his ethical obligation to respect and comply with the law by driving his vehicle while under the influence of alcohol which caused him to drive erratically and prompted a 911 call to be made about his driving. Prior to stopping his vehicle, the responding police officers observed respondent operating his vehicle in a dangerous manner. In addition, respondent repeatedly refused to comply with the police officers’ directions that he get out of his car which resulted in a taser being deployed on respondent. Subsequent to his arrest, respondent’s blood alcohol concentration exceeded the threshold for aggravated Driving While Intoxicated. VTL Section 1192(2a). Respondent subsequently pled guilty to Driving While Intoxicated in violation of VTL Section 1192(3). As respondent has acknowledged, his unlawful and reckless conduct endangered public safety and brought the judiciary into disrepute.

As a judge entrusted with the responsibility of applying the law and exercising judgment over the conduct of others, respondent is “obligated to conduct [himself] at all times in a manner that reflected [his] own personal respect for the letter and spirit of the law.” *Matter of Backal*, 87 N.Y.2d 1, 7 (1995). Any departure from this strict standard of personal conduct undermines his effectiveness as a judge and impairs the public's respect for the judiciary as a whole.

In prior cases involving alcohol-related driving offenses, in determining the appropriate disposition, the Commission has considered various mitigating and aggravating factors including: the degree of intoxication, whether the judge caused an accident or injury, whether the conduct was an isolated incident or part of a pattern, whether the judge was cooperative during arrest, whether the judge asserted his or her judicial office and sought preferential treatment, whether the judge accepted responsibility for the offense and the need and willingness of the judge to seek treatment. *See, e.g., Matter of Miranda*, 2021 NYSCJC Annual Report 224 [censure] (DWAI conviction; judge crashed his car and asserted his judicial office during his arrest); *Matter of Petucci*, 2021 NYSCJC Annual Report 272 [censure] (DWAI conviction; judge lost control of his car and crashed into a building, was belligerent to responding officers and was carrying a loaded handgun at the time of the incident); *Matter of Astacio*, 2019 NYSCJC Annual Report 71, *aff'd*, 32 N.Y.3d 131 (2018) [removal] (DWI conviction; judge was uncooperative during arrest and asserted her judicial office; judge also engaged in additional misconduct related to her judicial duties); *Matter of Landicino*, 2016 NYSCJC Annual Report 129 [censure] (DWI conviction; judge repeatedly asserted

his judicial office during arrest; subsequently he made extensive efforts to rehabilitate himself); *Matter of Newman*, 2014 NYSCJC Annual Report 164 [censure] (DWAI conviction after rear-ending a car at a traffic light; judge was uncooperative during arrest); *Matter of Apple*, 2013 NYSCJC Annual Report 95 [censure] (DWI conviction after rear-ending a car at a traffic light; blood alcohol concentration of .21%); *Matter of Maney*, 2011 NYSCJC Annual Report 106 [censure] (DWAI conviction; judge made illegal U-turn to avoid sobriety checkpoint, repeatedly identified himself as a judge and asked for “professional courtesy”); *Matter of Martineck*, 2011 NYSCJC Annual Report 116 [censure] (DWI conviction after driving erratically and hitting a mile marker); *Matter of Burke*, 2010 NYSCJC Annual Report 110 [censure] (DWAI conviction after causing an accident; additional misconduct included presiding over two cases without disclosure of her relationship with a complaining witness); *Matter of Mills*, 2006 NYSCJC Annual Report 218 [censure] (although judge was acquitted of DWI, she admitted driving after consuming alcoholic beverages and making offensive statements to the arresting officers).

In this case, respondent was under the influence of alcohol which caused him to drive erratically including crossing over into an incoming lane of traffic. Respondent’s misconduct was aggravated by his high blood alcohol concentration. His misconduct was further aggravated when he was repeatedly uncooperative during his arrest which resulted in a responding police officer deploying his taser on respondent. This conduct is inconsistent with a judge’s obligation to maintain high standards of conduct at all times, both on and off the bench, in order to promote public confidence in the integrity of the

judiciary. (Rules §§100.1 and 100.2(A))

In mitigation, respondent has accepted responsibility for his conduct and has had an unblemished judicial record. In addition, while respondent has acknowledged that he should have sought treatment before his arrest, shortly after his arrest, he voluntarily consulted with representatives of the New York State Judicial Wellness Committee and the New York City Bar Association Lawyers Assistance Program and has engaged in extensive treatment and rehabilitation, including voluntary monitoring. Respondent avers that his arrest was a trigger for him to obtain the help he needed and that he has not consumed an alcoholic drink since the incident more than two years ago.

In accepting the jointly recommended sanction of censure, we have taken into consideration that respondent's misconduct involved one incident, that he has engaged in ongoing treatment and avers that he is fully committed to his sobriety. We trust that respondent has learned from this experience and in the future will act in strict accordance with his obligation to abide by the Rules Governing Judicial Conduct.

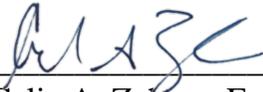
By reason of the foregoing, the Commission determines that the appropriate disposition is censure.

Mr. Belluck, Ms. Grays, Judge Camacho, Ms. Corngold, Judge Falk, Judge Mazzarelli, Judge Miller, Mr. Raskin, Mr. Rosenberg, Mr. Seiter and Ms. Yeboah concur.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on
Judicial Conduct.

Dated: October 8, 2021



Celia A. Zahner, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct