STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

CARL J. LANDICINO,

a Justice of the Supreme Court,
2nd Judicial District, Kings County.

DETERMINATION

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THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Honorable Terry Jane Ruderman, Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
Joel Cohen, Esq.
Jodie Corngold
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Richard A. Stoloff, Esq.
Honorable David A. Weinstein

APPEARANCES:

Robert H. Tembeckjian (Erica K. Sparkler, Of Counsel) for the Commission

Godosky & Gentile, P.C. (by David M. Godosky) for the Respondent

The respondent, Carl J. Landicino, a Justice of the Supreme Court, 2nd Judicial District, Kings County, was served with a Formal Written Complaint dated March 5, 2014, containing two charges. The Formal Written Complaint alleged that in

October 2012 respondent drove his motor vehicle while under the influence of alcohol, resulting in his conviction for Driving While Intoxicated, and that he repeatedly asserted his judicial office to advance his private interests in connection with his arrest. Respondent filed a verified Answer dated November 26, 2014.

The Commission rejected an Agreed Statement of Facts on July 17, 2014, and denied a request to reconsider the Agreed Statement on November 4, 2014.

By Order dated November 7, 2014, the Commission designated Honorable Felice K. Shea as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on February 9 and 10, 2015, in New York City. A stipulation of facts was received in evidence; respondent testified on his own behalf and called nine witnesses. The referee filed a report dated July 15, 2015.

The parties submitted briefs with respect to the referee's report. Both sides recommended the sanction of censure. On October 1, 2015, the Commission heard oral argument and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a Justice of the Supreme Court, 2nd Judicial District, Kings County, since January 1, 2012. His term expires on December 31, 2025.

As to Charge I of the Formal Written Complaint:

2. On October 17, 2012, respondent drove his car on Interstate 87 from Saratoga Springs to Colonie, New York, after voluntarily consuming a sufficient number of alcoholic beverages to cause him to become legally intoxicated within the meaning of

Vehicle and Traffic Law ("VTL") Section 1192(3).

3. Respondent had left Saratoga Springs around 3:00 PM on that date, after attending a judicial conference. He testified at the hearing that he "drank pretty heavily" the preceding night, and while he did not recall drinking that day, it was "not unlikely" he did so. The night before his arrest, respondent also took Xanax, which he had been prescribed, in an undetermined amount; however, the effect, if any, of this medication on his actions is uncertain and unquantifiable.

4. At about 4:00 PM, State Police Sergeant Mary McGreevy, who was in an unmarked car, observed respondent, through her rear view and side view mirrors, driving aggressively, making unsafe lane changes and following her vehicle too closely.

5. Respondent passed Sergeant McGreevy and accelerated to 80 miles per hour, in excess of the posted speed limit of 55 miles per hour. Sergeant McGreevy pursued respondent for two miles with her emergency lights and siren activated. She changed the tone of her siren two times in order to get respondent's attention, after which he abruptly came to a stop at the side of the road.

6. Sergeant McGreevy pulled over behind respondent's car and radioed her location and respondent's license plate number to a State Police operator. The license plate was a standard-issue New York State license plate that did not identify the vehicle as belonging to a judge.[1]

[1] Two months later, on or about December 21, 2012, respondent replaced the license plate on his vehicle with one that identified him as a Justice of the Supreme Court. Two years later, two months prior to the hearing in this proceeding, respondent replaced the judicial license plate with a standard-issue plate.

7. When Sergeant McGreevy approached the car and spoke to respondent, she detected an odor of alcohol on his breath and observed that he had glassy eyes and slurred speech. Respondent stumbled when exiting his car and had an unsteady gait, and his gross motor movements were mechanical and slow.

8. Sergeant McGreevy asked respondent if he had any drugs on his person, and respondent said that he had prescription drugs in his luggage.

9. Respondent was cooperative and polite in his interactions with Sergeant McGreevy.

10. New York State Park Police Officer Shaun Rooney arrived at the scene shortly after 4:00 PM. He detected an odor of alcohol on respondent's breath and observed that respondent was unsteady on his feet.

11. At about 4:25 PM, State Police Trooper Eric Terraferma arrived at the scene. He detected an odor of alcohol on respondent's breath and observed that respondent had difficulty keeping his balance.

12. Trooper Terraferma conducted three field sobriety tests – the horizontal gaze nystagmus, one-leg stand and finger-to-nose tests – all of which respondent failed.

13. Trooper Terraferma asked respondent to take a portable breath test, but respondent refused to do so. Respondent was then placed under arrest.

14. While seated in Trooper Terraferma's police car, respondent again was asked if he would submit to a chemical breath test. Respondent stated that he would not do so.

15. Respondent was taken to the State Police Station in Latham, New York. At the police station, respondent was asked two more times to submit to a breath test, and he refused to do so. At the hearing in this proceeding, respondent testified that his refusal to submit to a breath test was "unconscionable."

16. By simplified traffic information respondent was charged with Driving While Intoxicated (VTL §1192[3]); Driving While Ability Impaired (VTL §1192[1]); Following Too Closely (VTL §1129[a]); Moving from a Lane Unsafely (VTL §1128[a]); Speeding (VTL §1180[b]); and Refusal to Take a Breath Test (VTL §1194[1][b]). On January 2, 2013, respondent was indicted by a Grand Jury in Albany County and charged with Driving While Intoxicated (VTL §1192[3]); Reckless Driving (VTL §1212); Refusal to Take a Breath Test (VTL §1194[1][b]); Following Too Closely (VTL §1129[a]); Speeding (VTL §1180[d][1]); and Moving from a Lane Unsafely (VTL §1128[a]).

17. On January 29, 2013, respondent appeared before Judge Stephen W. Herrick in Albany County Court and pled guilty to Driving While Intoxicated in violation of VTL Section 1192(3), a misdemeanor, in full satisfaction of all charges. Respondent was sentenced to a one-year conditional discharge, a $500 fine and a $395 surcharge. Respondent was also required to successfully complete substance abuse treatment and to attend the Victim Impact Panel and the Drinking Driver Program. Respondent's driver's license was revoked for one year, and he was required to have an ignition interlock device installed on his car for one year.

As to Charge II of the Formal Written Complaint:

18. On October 17, 2012, at about 4:00 PM, when Sergeant McGreevy stopped respondent's car, she asked for his driver's license and vehicle registration. In response, respondent handed her his driver's license and his Unified Court System judicial identification card, which identified him as a judge.

19. Thereafter, respondent at least twice volunteered that he was coming from a judicial conference although Sergeant McGreevy had not asked him where he was coming from or where he had been.

20. Respondent told Sergeant McGreevy that he wanted to show her his luggage in the trunk of his car in order to prove that he was coming from a judicial conference, and, despite Sergeant McGreevy's request that respondent not open the trunk, he did so.

21. After respondent was placed under arrest and handcuffed, he said to Sergeant McGreevy, in words or substance, "Is this how you treat a Supreme Court Judge?"

22. During the drive to the State Police Station in Latham, respondent referred to the fact that he was a judge.

23. At the station house, respondent said, in words or substance, "Is this the way you treat a Supreme Court Justice?" and "Couldn't this just be resolved with a Speeding ticket?" and/or "Couldn't this just be made a Speeding ticket?"

Additional Factors

24. Respondent acknowledges that he is an alcoholic and has been

suffering from alcoholism for approximately the last four years. He states that his arrest was a trigger for him to obtain the help that he needed to treat his condition.

25. Respondent attended an inpatient alcohol rehabilitation program for 19 days in November 2012. Beginning in January 2013, he attended an intensive outpatient alcohol rehabilitation program four times per week for approximately two months, followed by a relapse prevention alcohol rehabilitation program two times per week for approximately four months. Since August 2013, he has attended a weekly outpatient alcohol rehabilitation group. Respondent avers that he has regularly attended Alcoholics Anonymous meetings at least once a week since November 2012, and the Administrator has no evidence to the contrary. From December 2012 through May 2014, respondent attended individual therapy sessions with a psychologist twice a week. Since June 2014, respondent has attended individual therapy sessions with a psychologist once a week. In addition, after attending the Victim Impact Panel as required by his sentence, respondent has returned to speak to other drunk driving offenders about his life experience as a judge before and after conviction to demonstrate that the law treats all offenders equally.

26. Respondent avers that he has not had an alcoholic drink since May 2013, and the Administrator has no evidence to the contrary.

27. Respondent acknowledges that it was wrong under these circumstances to identify himself as a judge to the police. He regrets that he did not behave in a manner consistent with the integrity and dignity required of all judges, on or off the bench.

28. Respondent avers that he has never been impaired at any time while attending to his official judicial duties and that the consumption of alcohol has never impacted on his ability to preside over any case. The Administrator has no evidence to the contrary. There is no claim in the pending Complaint that respondent engaged in on-the-bench misconduct or committed any other dereliction with respect to the discharge of his adjudicative responsibilities.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.2(C) and 100.4(A)(2) of the Rules Governing Judicial Conduct ("Rules") and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

As the Court of Appeals recently stated, Driving While Intoxicated ("DWI") is "'a very serious crime' ... that has long posed a 'menace' to highway safety ... and has caused many tragic consequences" (*People v. Washington*, 23 NY3d 228, 231 [2014] [internal citations omitted]). In language that seems applicable to the facts presented here, "[g]rievous harm to innocent victims could have been caused by defendant's driving with a blood alcohol level of .15% while speeding and weaving in and out of lanes, had [he] not been caught and stopped" (*County of Nassau v. Canavan*, 1 NY3d 134, 140 [2003]).

Respondent violated his ethical obligation to respect and comply with the

law by operating a motor vehicle at a high speed while legally intoxicated, resulting in his conviction for DWI, a misdemeanor. His unlawful, reckless conduct – which occurred just after he had attended a judicial conference, and which included leading police on a high-speed two-mile pursuit prior to his arrest – endangered public safety and brought the judiciary as a whole into disrepute. *See Matter of Martineck*, 2011 NYSCJC Annual Report 116, and cases cited therein. Moreover, during his arrest respondent engaged in additional egregious misconduct by repeatedly asserting his judicial status, in contravention of well-established ethical standards (Rules, §100.2[C]), leaving no doubt that he was seeking favorable treatment simply because of his judicial position. *See, e.g., Matter of Maney*, 2011 NYSCJC Annual Report 106. In its totality, respondent's behavior warrants a severe sanction.

In determining an appropriate disposition for alcohol-related driving offenses, the Commission in prior cases has considered mitigating and/or aggravating circumstances, including the level of intoxication, whether the judge's conduct caused an accident or injury, whether the conduct was an isolated instance or part of a pattern, the conduct of the judge during arrest (including whether the judge was cooperative or asserted his or her judicial position), and the judge's acceptance of responsibility and willingness to seek appropriate treatment. *See Matter of Newman*, 2014 NYSCJC Annual Report 164 (judge was convicted of Driving While Ability Impaired ["DWAI"] after rear-ending a car stopped at a traffic light; was uncooperative and engaged in "unruly, self-destructive and at times suicidal behavior" during his arrest [censure]); *Matter of Apple*, 2013 NYSCJC Annual Report 95 (DWI conviction, based on a blood alcohol

content ["BAC"] of .21% [censure]); *Matter of Maney*, *supra* (DWAI conviction; judge made an illegal U-turn to avoid a checkpoint, repeatedly identified himself as a judge and asked for "professional courtesy" [censure]); *Matter of Martineck*, *supra* (DWI conviction, based on a BAC of .18%, after driving erratically and hitting a mile marker [censure]); *Matter of Burke,* 2010 NYSCJC Annual Report 110 (DWAI conviction after causing a minor accident [censure, in part for additional misconduct]); *Matter of Mills*, 2006 NYSCJC Annual Report 218 (though acquitted of DWI, judge admitted operating a motor vehicle after consuming alcoholic beverages, "vehemently" protested her arrest and made offensive statements to the arresting officers [censure]); *Matter of Pajak*, 2005 NYSCJC Annual Report 195 (DWI conviction after a property damage accident [admonition]); *Matter of Stelling*, 2003 NYSCJC Annual Report 165 (DWI conviction following a prior conviction for DWAI before he was a judge [censure]); *Matter of Burns*, 1999 NYSCJC Annual Report 83 (DWAI conviction [admonition]); *Matter of Henderson*, 1995 NYSCJC Annual Report 118 (DWAI conviction; judge referred to his judicial office during the arrest and asked, "Isn't there anything we can do?" [admonition]); *Matter of Siebert*, 1994 NYSCJC Annual Report 103 (DWAI conviction after causing a three-car accident [admonition]); *Matter of Innes*, 1985 NYSCJC Annual Report 152 (DWAI conviction; judge's car struck a patrol car while backing up [admonition]); *Matter of Quinn*, 54 NY2d 386, 395 (1981) (DWI conviction after a prior conviction for DWAI and other alcohol-related incidents; judge was uncooperative and abusive to arresting officers and repeatedly referred to his judicial position [removal reduced to censure by the Court of Appeals in view of the judge's retirement and ill

health, noting "his manifest unfitness for judicial office"]); *Matter of Barr*, 1981 NYSCJC Annual Report 139 (two alcohol-related convictions; judge asserted his judicial office and was abusive and uncooperative during his arrests, but had made "a sincere effort to rehabilitate himself" [censure]).

In this matter, the record establishes that respondent operated his vehicle while intoxicated, at a high speed (at least 80 miles per hour) and in an unsafe manner, and continued to do so for two more miles while pursued by police, with emergency lights and siren activated, before stopping abruptly. While he was not charged with attempting to flee, his conduct imperiled the lives of others, including other motorists, their passengers and law enforcement personnel. Although he refused to take a breath test[2], the field sobriety tests and the observations of several police officers leave no doubt that respondent's ability to drive safely was seriously impaired by alcohol. Indeed, he has acknowledged that "due at least in part" to the degree of his intoxication at the time, he "does not specifically recall the details of all of his statements and actions" during and after his arrest.

Exacerbating this serious misconduct, throughout this entire incident respondent invoked his judicial position, creating the appearance that he was using the

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[2] New York's "implied consent" law requires a driver to submit to such testing upon the request of an officer who reasonably suspects impairment by drugs or alcohol, and refusing to do so triggers serious consequences, including a one-year suspension of the driver's license and a fine (VTL §1194.2[a][1]). The Court of Appeals has stated that such testing is "an important investigative tool" in an attempt to combat the scourge of alcohol-related driving offenses (*People v. Washington*, *supra*, 23 NY3d at 231). At the hearing, respondent testified that refusing to take the breath test was "unconscionable," and indeed – despite the stipulation that he was "cooperative" during the arrest – he acknowledged that he "wouldn't characterize my behavior as polite or cooperative" (Tr 51, 64).

prestige of judicial office in an attempt to minimize the consequences of his unlawful behavior. Respondent does not dispute the recollections of various law enforcement personnel that on repeated occasions – at the scene of his arrest, in the police car, and at the police station – he referred to his judicial status. While respondent attributes this behavior to his diminished capacity and judgment due to his intoxication, that factor in no way excuses or diminishes his responsibility for his actions.

Initially, respondent interjected his judicial status into the incident by producing his judicial identification card when asked for his driver's license and vehicle registration, conveying the appearance that he was asserting his judicial office in order to obtain special treatment by the police. Standing alone, such behavior can warrant public discipline. *See Matter of Werner*, 2003 NYSCJC Annual Report 198 (although acquitted of DWI, judge was admonished for giving the police officer his judicial ID when stopped and asked for his driver's license). Thereafter, respondent continued to invoke his judicial position. He volunteered "at least twice" that he was coming from a judicial conference and offered to show his luggage in his trunk to prove it; then, refusing to heed the officer's specific instruction that he not open his trunk, he proceeded to do so. It was unnecessary and completely irrelevant for respondent to mention his attendance at a judicial conference, except as a means of calling attention to his judicial status and conveying the message that, as a judge, he was entitled to special consideration. Finally, respondent underscored that message by stating several times, in words or substance, "Is this how you treat a Supreme Court Justice?", while asking if the matter could be resolved with a Speeding ticket – an unmistakable, specific request for special treatment

based on his judicial status. The implicit message in respondent's actions and statements – that because he is a high-ranking judge, he should be exempt from the ordinary standards of law enforcement that apply to others – is repugnant and inconsistent with ethical standards prohibiting a judge from using the prestige of judicial office to advance private interests (Rules, §100.2[C]). As the Commission has stated: "Public confidence in the fair and proper administration of justice requires that judges, who are sworn to uphold the law, neither request nor receive special treatment when the laws are applied to them personally" (*Matter of Werner*, *supra*, 2003 NYSCJC Annual Report at 199).

In determining the appropriate sanction, we must consider whether this single incident, which occurred during respondent's first year as a judge, has irreparably damaged his effectiveness as a judge and whether the public interest is served by permitting him to remain on the bench in the face of such serious misconduct.[3] While we view respondent's misconduct as extremely serious, we have concluded that it does not establish that he is "unfit to remain in office" (*Matter of Reeves,* 63 NY2d 105, 111 [1984]).

In making this determination, we are mindful of respondent's frank acknowledgment that he suffers from the insidious disease of alcoholism and his assertion that this episode "was a trigger for him to obtain the help that he needed to treat

[3] We note that although there is no evidence that respondent's consumption of alcohol affected his performance of judicial duties, that fact "is not determinative" since a judge "also has a higher obligation to insure that his conduct off the Bench does not undermine the integrity of the judiciary or public confidence in his character and judicial temperament" (*Matter of Quinn*, *supra*, 54 NY2d at 392).

his condition" (Stipulation, par 29). In this regard, the record before us of his ongoing rehabilitative efforts and his commitment to sobriety is compelling. Since his arrest more than three years ago, as the referee has noted, respondent has "made extensive efforts to become rehabilitated as well as to assist others similarly afflicted" (Report, p 10); he has undergone inpatient and outpatient treatment and counseling, continues to regularly attend individual therapy sessions and Alcoholics Anonymous meetings, and has continued to appear at the Victim Impact Panel to speak to other drunk driving offenders about his own experiences as a judge who is an alcoholic.

Despite some admitted relapses after the incident, respondent avers that he has not had an alcoholic drink since May 2013. Were it not for the abundant evidence that respondent has taken significant steps to rehabilitate himself, and seems to be succeeding, we would vote to remove him for his egregious conduct.

To be sure, the Commission has encouraged judges who need assistance with alcohol-related problems to take advantage of the services that exist "*before* the effects of alcoholism exhibit themselves in behavior that must be addressed in a disciplinary setting" (2014 NYSCJC Annual Report 23 [emphasis added]). While we give due weight to respondent's rehabilitative efforts, we emphasize that the result in this case should not suggest that professing a commitment to sobriety *after* an alcohol-fueled incident of misconduct will guarantee that a judge can avoid removal for egregious misconduct (*see Matter of Aldrich*, 58 NY2d 279, 283 [1983] [judge was removed for presiding over two court sessions while under the influence of alcohol, engaging in conduct that included "displays of vulgarity and racism and ... threats of violence both on

and off the Bench").

In determining the sanction here, we are also mindful of the referee's findings that respondent has been "cooperative" and "contrite" and that his "candid" and "forthright" testimony at the hearing reflects that he "has insight into the nature of his disease" and "has taken responsibility for his actions" (Report, pp 10-11). We thus conclude, based on the totality of the record before us, that respondent should be censured.

As we have stated recently in several cases involving alcohol-related driving offenses with significant aggravating factors (*Matter of Newman*, *Matter of Martineck* and *Matter of Maney, supra*), were the sanction of suspension from judicial office without pay available to us, we would have imposed it in those cases, and would impose it here, to reflect the seriousness of such behavior. Absent that alternative, we have concluded that censuring respondent not only underscores the seriousness of such misconduct, but also serves as a reminder to respondent and to the public that judges at all times are held to the highest standards of conduct, even off the bench (Rules, §100.2[A]).

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

Judge Klonick, Judge Ruderman, Judge Acosta, Mr. Belluck, Ms. Corngold, Mr. Emery, Mr. Harding, Mr. Stoloff and Judge Weinstein concur. Mr. Belluck files a concurring opinion, which Mr. Emery and Judge Weinstein join.

Mr. Cohen was not present.

CERTIFICATION

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

Dated: December 28, 2015

Jean M. Savanyu, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

CARL J. LANDICINO,

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2nd Judicial District, Kings County.

CONCURRING OPINION
BY MR. BELLUCK,
WHICH MR. EMERY
AND JUDGE
WEINSTEIN JOIN

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As I have noted in previous disciplinary cases involving alcohol-related driving offenses, I believe that the Commission's past decisions for such behavior have been unduly lenient given the serious consequences of drunk driving. *See Matter of Maney*, 2011 NYSCJC Annual Report 106; *Matter of Burke*, 2010 NYSCJC Annual Report 110. I have stated before, and still believe, that in most circumstances drunk driving should lead to removal, particularly where there are aggravating factors. Nevertheless, for the reasons set forth below, I respectfully concur that in this case censure is the appropriate result. I write separately to address the circumstances that have persuaded me to vote for censure in this case and to underscore that in future cases involving similar conduct, I may argue strenuously for removal – especially in the absence of a persuasive record demonstrating a judge's acceptance of his or her alcoholism and commitment to rehabilitation.

The conduct presented here – respondent drove drunk, endangered innocent

victims, asserted his judicial office and engaged in conduct after the incident from which it could be inferred that he was trying to game the system – is unquestionably repugnant and would ordinarily require the sanction of removal. Holding judicial office is not a right, but a privilege that can be forfeited when a judge engages in behavior that is so plainly inconsistent with the high standards of conduct that our society requires both on and off the bench.

Judges hold powerful positions in which they are entrusted to sit in judgment of the conduct of others, including adjudicating and sentencing drunk drivers. In addition, for good reason, they are also highly respected members of their communities. I have the utmost respect for members of the judiciary and have previously written about the increasing workloads and demands being placed on judges. Few positions carry with them a higher level of respect from the legal community and the public. However, no judge is above the law. A judge whose personal behavior flouts the law and puts others at risk of death and serious injury should not be allowed to continue to have the protection and privileges of judicial office.

Despite these considerations, there is compelling mitigation that weighs against the sanction of removal in this case.[1] I give little weight to the majority's

[1]The Court of Appeals has underscored that the severity of the sanction imposed for many types of misconduct "depends upon the presence or absence of mitigating and aggravating circumstances" (*Matter of Rater*, 69 NY2d 208, 209 [1987] ["in the absence of any mitigating factors, [such conduct] might very well lead to removal.... On the other hand, if a judge can demonstrate that mitigating circumstances accounted for such failings, such a severe sanction may be unwarranted"]). *See also, e.g., Matter of Edwards*, 67 NY2d 153, 155 (1986) ("as a general rule, intervention in a proceeding in another court should result in removal," but this "should not ... preclud[e] consideration of mitigating factors"); *Matter of Dixon*, 47 NY2d 523, 525 (1979) ("In so deciding [the appropriate sanction] we consider various mitigating factors").

findings that respondent has been "cooperative" and "contrite" (Determination, p 15), since cooperation with a Commission inquiry should be expected of every judge, and contrition may be strategic and insincere. What is most compelling – and uncontroverted – is that respondent suffers from the disease of alcoholism and that, in the three years since the incident, he has demonstrated a strong commitment to fighting his disease and helping others similarly afflicted. In that regard, respondent's subsequent behavior, documented at length in the record before us, demonstrates an apparently sincere, determined effort to ensure that his conduct will not be repeated. These efforts, I believe, deserve strong consideration because he has convinced me that his acknowledgment of his alcoholism and commitment to treatment are sincere.

Both Congress and the Legislature of this State have recognized that alcoholism is an illness that must be treated as a serious public health problem (42 USC §4541[a]; NY Mental Hygiene Law §1.03[13] ["'Alcoholism' means a chronic illness in which the ingestion of alcohol usually results in the further compulsive ingestion of alcohol beyond the control of the sick person to a degree which impairs normal functioning"). It is a disease from which no group in our society, including judges, is exempt.

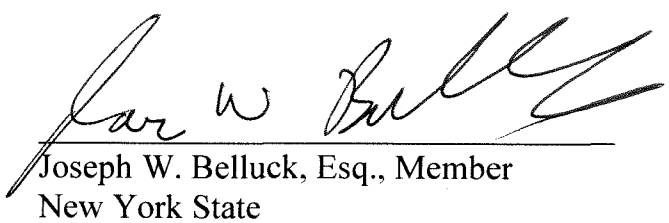
To be sure, respondent's alcoholism in no way diminishes his responsibility for his terrible behavior, but I believe that his subsequent actions compellingly show that he recognizes the harm that could have come from this episode and thus, that he can continue to serve as a productive member of the bench, the bar and society. As both sides here have acknowledged, while his rehabilitative efforts appear to be succeeding,

whether they are ultimately successful can only be measured over his lifetime. However, the fact that three years have passed since the incident and all indications are that he has maintained his treatment and sobriety since May 2013, allows some measure of optimism that he will not endanger himself or others in the future. Even though there are no guarantees that the conduct will not recur, I have been convinced that he should remain on the bench.

My sincere hope is that all judges recognize the high stakes roulette that is involved when they drive drunk and will heed the Commission's increasing penalties as a stern warning to avoid gambling with their lives and the lives of others. However, I do not want to create an environment where judges are afraid to seek assistance that may help them to avoid discipline. Judges who suffer from alcoholism or other addictions should feel increasingly free to come forward and get help (*see* "Seeking Treatment for an Alcohol Problem," 2014 NYSCJC Annual Report 23). Judges should know that if they suffer from these illnesses getting help before engaging in dangerous conduct on or off the bench will be viewed with empathy by court administrators and be a mitigating factor for this Commission.

Accordingly, on the facts presented here, I concur that the sanction of censure is appropriate.

Dated: December 28, 2015



Joseph W. Belluck, Esq., Member
New York State
Commission on Judicial Conduct