

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

DETERMINATION

DIANE A. LEBEDEFF,

a Judge of the Civil Court of the City of New
York and an Acting Justice of the Supreme
Court, New York County.

THE COMMISSION:

Lawrence S. Goldman, Esq., Chair
Honorable Frances A. Ciardullo, Vice Chair
Stephen R. Coffey, Esq.
Colleen C. DiPirro
Richard D. Emery, Esq.
Raoul Lionel Felder, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (Vickie Ma, Of Counsel) for the Commission

Gair, Gair, Conason, Steigman & Mackauf (by Ben B. Rubinowitz) for
Respondent

The respondent, Diane A. Lebedeff, a judge of the Civil Court of the City of

New York and an acting justice of the Supreme Court, New York County, was served with a Formal Written Complaint dated November 9, 2004, containing one charge.

On February 22, 2005, the administrator of the Commission, respondent and respondent's counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), 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 March 10, 2005, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a judge of the Civil Court of the City of New York, New York County since 1983 and an acting justice of the Supreme Court since 1988. Respondent is an attorney.

2. From on or about September 1994 to on or about May 2000, respondent presided over *Batra v. Office Furniture Service, Inc., et al.* ("*Batra v. Office Furniture*"), a civil matter that, at various times, involved ten different parties, and even more attorneys appearing at various times for each of these parties, including defendant Kaspar Wire Works. The plaintiffs, Ravi Batra and his wife, Ranju Batra, appeared by co-plaintiff Ravi Batra, an attorney licensed to practice law in New York. The plaintiffs sought \$80 million in damages as a result of Mr. Batra's alleged fall off a swivel chair in his law office.

3. Respondent has known Mr. Batra in both professional and social

settings since the late 1980s. Respondent and Mr. Batra have been in attendance at bar association meetings and have been to each other's homes, dined at restaurants together on various occasions, exchanged nominal gifts such as candy to each other's children, and had at least one joint family outing together. Respondent and Mr. Batra are friendly.

4. Respondent did not disclose her relationship with Mr. Batra to the defendants or defense attorneys in *Batra v. Office Furniture*.

5. Respondent and Mr. Batra socialized together during the period from 1994 to 2000 that *Batra v. Office Furniture* was pending before respondent. In that period, they had lunch together on at least two occasions, engaged in personal or social conversations with one another and met with one another in court to the exclusion of the other attorneys in the matter.

6. Approximately five times in the course of presiding over appearances in the matter, respondent excused the defense attorneys and stated that she was going to engage in "gossip" or other social conversation not related to the case, with Mr. Batra. On those occasions, she thereupon spoke with Mr. Batra privately in her robing room or chambers.

7. Respondent awarded Mr. Batra several fiduciary appointments while *Batra v. Office Furniture* was pending, including a lucrative guardianship in *Matter of Sylvia Marco* in 1999, in which respondent approved on consent a total of \$84,000 in fees to Mr. Batra.

8. Respondent did not disclose her fiduciary appointments of Mr. Batra

to the other defendants or defense attorneys in *Batra v. Office Furniture*.

9. On July 26, 1999, respondent struck the responsive pleadings of third-party defendant Kaspar Wire Works for failing by one day to meet a stipulated 45-day discovery deadline, which was stipulated by the attorneys, each attorney knowing that non-compliance would result in the striking of the responsive pleading.

10. By Order dated November 1, 1999, which was later expanded on the record on January 21, 2000, respondent granted Mr. Batra's motion for sanctions against defendant Office Furniture and referred the matter to a special referee to determine the amount of sanctions.

11. On August 10, 2000, the Appellate Division, First Department, reversed and reinstated Kaspar's pleadings, noting as follows:

Had the IAS Court [respondent] objectively reviewed the history of this case, it could not have concluded that Kaspar's slight and arguably justified delay was in any way comparable to the years of dilatory practice in obstructing discovery that took place preceding Kaspar's arrival on the scene.

12. Thereafter, *Batra v. Office Furniture* was transferred to another judge, and the case was concluded with Mr. Batra's acceptance of a settlement in the amount of \$225,000.

13. Respondent now appreciates that her impartiality could reasonably be questioned in *Batra v. Office Furniture* because of her friendship with Mr. Batra, and that she should at least have disclosed her relationship to Mr. Batra, on the record.

14. Respondent now appreciates that, having decided to preside over

Batra v. Office Furniture, she should not have socialized with Mr. Batra while the case was pending.

15. Respondent now appreciates that, insofar as the award of a fiduciary appointment signifies a judge's confidence in the credibility and integrity of the appointee, awarding Mr. Batra fiduciary appointments at the same time that he was a litigant whose credibility she would have to evaluate in a personal injury case in which he was seeking monetary damages created a direct conflict.

16. Although respondent was publicly censured in November 2003 for conduct related to her award of fiduciary appointments to Alice Krause, her friend and tax accountant, the conduct therein overlapped the conduct herein, and respondent's conduct herein does not constitute a failure to abide by the November 2003 public censure.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A) and 100.3(E)(1) of the Rules Governing Judicial Conduct 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. 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.

A judge's disqualification is required in any matter where the judge's impartiality might reasonably be questioned (Section 100.3[E][1] of the Rules Governing

Judicial Conduct [“Rules”]). As respondent has stipulated, she violated that standard by presiding over a personal injury case in which the co-plaintiff was Ravi Batra, an attorney with whom she had a significant social and professional relationship. *See, Matter of Robert*, 1997 Annual Report 127, *accepted*, 89 NY2d 745 (1997); *Matter of DiBlasi*, 2002 Annual Report 87 (Comm. on Judicial Conduct).

For more than five years, respondent presided over and made numerous rulings in the *Batra* case, in which Mr. Batra and his wife were seeking \$80 million in damages. Respondent did not disclose her relationship with Mr. Batra, which included dinners together, visits to each others’ homes, and at least one joint family outing, and she continued to socialize with Mr. Batra while his case was pending before her. During that time, not only did they lunch together and have private meetings and conversations in court, but on several occasions respondent specifically excused the other attorneys in the case so that she could “gossip” privately with Mr. Batra. Such conduct created an appearance of impropriety, in violation of well-established ethical standards (Rules, §100.2[A]) and demonstrates a glaring insensitivity by respondent to her duty to avoid even the appearance of impropriety. Under the circumstances, even if the judge had scrupulously avoided discussing the merits of Mr. Batra’s case during their private conversations, the appearance of impropriety would be inevitable.

During this same period, respondent awarded fiduciary appointments to Mr. Batra, including an appointment to a lucrative guardianship resulting in a fee of \$84,000. The appointments compound the appearance that she could not be impartial in Mr.

Batra's case. The award of a fiduciary appointment signifies a judge's confidence in the credibility and integrity of the appointee. In the litigation before her, respondent was necessarily required to evaluate Mr. Batra's credibility, and she should have recognized her ethical obligation not to preside in the case.

In one ruling in the case, respondent granted Mr. Batra's motion for sanctions against one of Mr. Batra's adversaries. Another of respondent's rulings was overturned by the Appellate Division, in a decision suggesting that the ruling, on its face, showed a lack of "objectiv[ity]" by respondent. (Following that ruling, the case was transferred to another judge.) Because of her relationship with Mr. Batra, respondent's rulings in his favor raise a suspicion that she was influenced by personal considerations. *See, Matter of Simeone*, 2005 Annual Report ___ (Comm. on Judicial Conduct), <http://www.scjc.state.ny.us/Determinations/S/simeone.htm>. Such an appearance is inimical to public confidence in the integrity and impartiality of the judiciary, as respondent should have recognized. Her apparent failure to realize that her relationship with Mr. Batra would raise the question whether her rulings were based solely on the merits is shocking and suggests an unacceptable insensitivity to judicial ethics.

We note that respondent has previously been censured for creating an appearance of impropriety by failing to pay her accountant for tax preparation services over the same period that she was appointing the accountant as a fiduciary and approving the accountant's compensation. *Matter of Lebedeff*, 2004 Annual Report 128 (Comm. on Judicial Conduct). As in that case, we conclude here that respondent's "dereliction of her

ethical responsibilities created an appearance of impropriety” and “jeopardizes the public’s respect for the judiciary as a whole, which is essential to the administration of justice.”

The misconduct set forth herein overlapped respondent’s misconduct in the earlier matter and predated the Commission’s proceedings concerning it. Had it postdated the earlier determination, we would have been constrained to consider whether respondent ignored the Commission’s warnings concerning her ethical obligations and whether the sanction of removal was warranted. As set forth herein, respondent’s misconduct amply justifies the sanction of censure. In view of respondent’s disciplinary history, any future ethical transgressions may be met with a more severe sanction.

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

Mr. Goldman, Judge Ciardullo, Mr. Coffey, Mr. Emery, Mr. Felder, Ms. Hernandez, Judge Peters, Mr. Pope and Judge Ruderman concur.

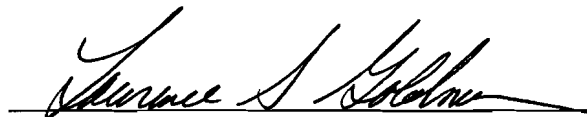
Ms. DiPirro and Judge Luciano were not present.

CERTIFICATION

It is certified that the foregoing is the determination of the State

Commission on Judicial Conduct.

Dated: March 18, 2005

A handwritten signature in black ink, appearing to read "Lawrence S. Goldman", written over a horizontal line.

Lawrence S. Goldman, Esq., Chair
New York State
Commission on Judicial Conduct