

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

RICHARD D. HUTTNER,

a Justice of the Supreme Court,
Kings County.

THE COMMISSION:

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

APPEARANCES:

Robert H. Tembeckjian (Alan W. Friedberg and Vickie Ma, Of Counsel)
for the Commission

Jerome Karp for Respondent

The respondent, Richard D. Huttner, a justice of the Supreme Court, Kings County, was served with a Formal Written Complaint dated March 3, 2005, containing

one charge. Respondent filed a verified answer dated March 10, 2005.

On April 13, 2005, the administrator of the Commission, respondent's attorney and respondent 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 April 21, 2005, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Supreme Court since January 1985. Prior to that, he served as a judge of the Family Court of the City of New York from 1979 through 1984. Insofar as respondent is 70 years of age, he is presently serving a term of office that expires on December 31, 2005. Insofar as respondent is not 76 years of age, he is eligible to apply for certification for an additional two-year term, to commence January 1, 2006.

2. Respondent has had a close social relationship with Ravi Batra, Esq. since the mid-1990s. They have been to each other's homes, and respondent has attended various of Mr. Batra's family events, including a wedding anniversary celebration and a memorial service. They have socialized together with their spouses, and have had drinks, lunch and dinner together on numerous occasions.

3. Between 1996 and 1999, respondent appointed Mr. Batra as a fiduciary in 11 matters. In one such matter in 1998, respondent appointed Mr. Batra as

receiver to the Cypress Hills Cemetery and subsequently appointed him as counsel to receiver.

4. Respondent socialized with Mr. Batra while the Cypress Hills matter was pending before him and continued to do so after Mr. Batra stepped down as receiver on May 10, 2000. For example, respondent and Mr. Batra and their wives met socially for drinks and dinner at a restaurant in respondent's Manhattan apartment building on May 11, 2000.

5. In June 2000, Mr. Batra appeared before respondent as counsel for two of the three defendants in *Baisden et al. v. Pacific House Residence for Adults Housing Development Fund Corporation et al.* ("Baisden"). The Office of the Attorney General represented the third defendant, the Commissioner of the New York State Department of Health.

6. Respondent continued to socialize with Mr. Batra while *Baisden* was pending before him.

7. Respondent did not disclose his social relationship with Mr. Batra to the other attorneys in the *Baisden* matter, on or off the record. Nor did respondent disclose to the attorneys that he had awarded fiduciary appointments to Mr. Batra.

8. The attorneys made several appearances before respondent in the *Baisden* matter. Respondent presided over a three-hour hearing and signed a stipulation between the parties as "so ordered."

9. Respondent stipulates and agrees that he will not seek or accept re-

certification to serve as a justice of the Supreme Court beyond the end of his current term on December 31, 2005.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.3(E) and 100.3(F) 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, 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"]). Respondent violated that standard by presiding over a case notwithstanding that he had a close social relationship with the defendants' attorney, Ravi Batra. *See, Matter of Robert*, 1997 Annual Report 127, accepted, 89 NY2d 745 (1997); *Matter of DiBlasi*, 2002 Annual Report 87 (Comm. on Judicial Conduct); *Matter of Lebedeff*, 2006 Annual Report ____ (Comm. on Judicial Conduct) (<http://www.scjc.state.ny.us/Determinations/L/lebedeff.htm>). Their social relationship included meals together, family celebrations, and visits to each others' homes. At the very least, respondent should have disclosed the relationship so that the parties and their attorneys could have had an opportunity to consider whether to seek his disqualification (see Section 100.3[F] of the Rules).

While the *Baisden* case was pending before him, respondent continued to socialize with Mr. Batra. Even if they did not discuss the merits of Mr. Batra's case during their out-of-court meetings, an appearance of impropriety would be inevitable. Despite several court appearances in *Baisden*, respondent never disclosed his social relationship with Mr. Batra to the other attorneys in the matter; nor did he disclose that, in the four years prior to the *Baisden* case, he had awarded eleven fiduciary appointments to Mr. Batra. Those appointments compounded the appearance that he could not be impartial when Mr. Batra appeared before him.

In mitigation, it appears that respondent's actual role in the *Baisden* case, which was concluded by stipulation, was relatively small.

We are mindful that in December 2001 respondent was censured for lending the prestige of judicial office to advance private interests by his "highly visible" participation in litigation involving his residential cooperative board. *Matter of Huttner*, 2002 Annual Report 113 (Comm. on Judicial Conduct). Although respondent's misconduct in this matter predates the Commission's proceedings as to the earlier matter, the record establishes that respondent lacks sensitivity to the special ethical obligations of judges and indicates the need for a severe sanction.

In accepting the stipulated disposition and imposing a sanction less than removal, we are constrained by the fact that, at the age of 70, respondent will retire at the end of this year, having agreed not to seek re-certification for an additional term. Absent such an agreed disposition, in which respondent has acknowledged his misconduct, it is

unlikely that a disciplinary proceeding resulting in any public sanction could have been completed prior to respondent's departure from the bench. In view of the foregoing, we reluctantly accept that this result is appropriate. *See, Matter of Dye*, 2004 Annual Report 94 (Comm. on Judicial Conduct).

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

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

Ms. Di Pirro and Judge Luciano were not present.

CERTIFICATION

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

Dated: July 5, 2005



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