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

JOHN P. DiBLASI,

a Justice of the Supreme Court, Westchester
County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Frederick M. Marshall, Vice Chair
Honorable Frances A. Ciardullo
Stephen R. Coffey, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

Gerald Stern (Vickie Ma, Of Counsel) for the Commission

Brennan Fabriani & Novenstern, LLP (By Timothy J. Brennan)
for Respondent

The respondent, John P. DiBlasi, a justice of the Supreme Court, Westchester County, was served with a Formal Written Complaint dated April 13, 2001,

containing three charges. Respondent filed an answer dated May 11, 2001.

On September 10, 2001, 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, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On November 8, 2001, the Commission approved the agreed statement and made the following determination.

1. Respondent is a Justice of the Supreme Court, Westchester County, serving a 14-year term that commenced in January 1995 and expires in December 2008.

With respect to Charge I of the Formal Written Complaint:

2. In October 1999, respondent received a memorandum from Administrative Judge Francis Nicolai requesting respondent's vacation schedule for the following year. The Administrative Judge's memorandum, which emphasized the importance of advising the Administrative Judge of vacation plans, provided as follows:

> I must submit the assignments for 2000 to Deputy Chief Administrative Judge Joseph J. Traficanti, Jr., in November. In order to enable me to make the Duty Judge, Naturalization, Grand Jury and other assignments, I need your vacation schedules.

> Your vacation schedules are an important management tool. Vacations for court officers, clerks, stenographers and other staff are granted to coincide with judge's vacations. When judges change their vacation schedules, particularly during July and August, this causes staffing problems. Please try to make your vacation plans as definite as reasonably possible.
>
> You are reminded that the annual vacation is twenty (20) days.
>
> Please submit your vacation plans for 2000 to me no later than Friday, October 22, 1999. *Be sure to always copy your vacation schedule and any changes to your Chief Clerk.*
>
> Also, I am attaching a copy of the 2000 Terms of Court and the 2000 Holidays.
>
> Thank you for your cooperation.

3. Shortly thereafter, respondent submitted his vacation plans for 2000 to the Administrative Judge. He reported that he planned to be away for a few days in February and for two weeks in late August 2000.

4. In late May or early June 2000, respondent enrolled in a six-week broadcasting class from July 10, 2000, to August 21, 2000, at the Connecticut School of Broadcasting in Stratford, Connecticut, approximately 40 miles from the Westchester courthouse. Classes were held Monday through Friday, from 9:15 AM to 1:00 PM.

5. The Rules of the Chief Judge provide that court shall commence no later than 9:30 AM and conclude no earlier than 5:00 PM (22 NYCRR §3.1). That section also provides that the Chief Administrator of the Courts may authorize variances in the opening and closing hours of the courts. This provision serves as a reminder to

judges that they are not free to create their own work schedules.

6. At the time respondent submitted his vacation plans for 2000, he had no plans to attend the broadcasting class. Respondent did not advise his Administrative Judge of any change in his vacation plans that would reflect his planned absences to attend the broadcasting classes.

7. Respondent did not appear in court until 2:00 PM on July 10, 11,12, 13, 17 and 19 because he was attending the broadcasting class. He planned to follow that schedule through August 21, 2000.

8. On two of the eight days that respondent attended the broadcasting class, July 14 and July 18, 2000, respondent remained after class and did not appear in court at all for the purpose of conducting court business.

9. Respondent did not complete the program and withdrew after the eighth day of class, on July 20, 2000, because a newspaper reported respondent's absence from court.

10. Respondent asserts that he intended (in records he kept) to account for the 31 consecutive days that he would have been in broadcasting class as 31 half-days, or 16 days, of vacation time. He asserts further that he did not believe it was necessary for his Administrative Judge to know that respondent was attending the classes in Stratford, Connecticut for 31 straight court days.

11. Respondent neither advised the Administrative Judge that he was

attending the broadcasting class nor reported that the time that he attended class and traveled from class to court would be considered vacation time. He regarded his plans to attend the classes as a change in his vacation schedule. Respondent asserts that it was his belief that changes in vacation schedules were not regularly reported to the Administrative Judge. He further asserts that his absence from the court during the six-week period, as indicated above, was not covered by the Administrative Judge's October 1999 memorandum.

12. Respondent had been assigned to preside over the Central Calendar Part (formerly known as the Trial Assignment Part or TAP) on Wednesdays, commencing at 10:00 AM, where the motion calendar was called. To accommodate his schedule to attend broadcasting classes in Connecticut, respondent sought approval to commence the Central Calendar Part at 2:00 PM on Wednesdays in July and August 2000. A notice had to be sent to lawyers to advise them of the change. In seeking approval for the change, he did not disclose to his Administrative Judge, or to anyone who reported directly to the Administrative Judge, that the purpose was to permit him to attend the broadcasting classes. Respondent advised court personnel with whom he worked in the part that he would be at broadcasting school in the mornings. Respondent concedes that he was wrong not to have disclosed to his Administrative Judge his intention to attend the classes, especially since the need for approval to change the time of the motion calendar provided an excellent opportunity to make full disclosure about his plans to attend classes

in Connecticut.

13. Respondent's position that it would be feasible to charge 31 "half-days" to vacation time does not withstand close scrutiny. Although he intended to charge the 31 "half-days" to vacation time, the most productive time in a court day, especially in summer months, is early in the day. Consequently, when a judge begins the court day at 2:00 PM, or later, especially in July or August, it is unrealistic to believe that he or she is devoting a half-day to court business. Respondent should have been aware that his plans might not have been acceptable to his Administrative Judge or to the Office of Court Administration, and that, by itself, should have prompted respondent to request authorization for his plans to attend the six-week broadcasting class during daytime hours.

14. Before the commencement of the broadcasting course, respondent reviewed the cases pending in his part and rescheduled those that required his direct attention to the afternoons when he would be present. The clerk of the part, as a result of respondent's plans to attend the broadcasting classes, rescheduled some matters for a later time. During morning sessions while respondent attended the broadcasting class, respondent's law clerk held conferences on some cases. It is not uncommon for law clerks to conduct conferences on scheduled cases.

15. If a hearing in this matter were held, respondent's Administrative Judge would testify without contradiction that he would not have approved respondent's

plans to attend the broadcasting class for 31 successive days during court hours notwithstanding that respondent in the future was to moderate a cable television show, approved by the Office of Court Administration, about the court system.

16. It was improper for respondent to fail to have advised his Administrative Judge of respondent's planned absences from the court in July and August 2000 and to have attended the classes during court hours without approval.

With respect to Charge II of the Formal Written Complaint:

17. Mental Hygiene Legal Service ("MHLS") is a state advocacy agency for mentally disabled, institutionalized patients.

18. In February and March 2000, Dana Stricker, an MHLS attorney, appeared before respondent in the Mental Hygiene Part six times. Sometime in February, respondent and Ms. Stricker developed a romantic relationship, which lasted beyond March 2000.

19. Respondent conducted ten, contested hearings in which Ms. Stricker appeared before him on matters involving either the involuntary retention or medication of a patient: In the Matter of L.J., In the Matter of S.D., In the Matter of P.U., In the Matter of P.U., In the Matter of R.M., In the Matter of R.M., In the Matter of S.M., In the Matter of B.I., In the Matter of R.G. and In the Matter of D.G. Respondent's decision in each of the above matters was contrary to Ms. Stricker's position. There is no

evidence that any of his rulings were in any manner influenced by his relationship with Ms. Stricker.

20. Respondent should have disqualified himself from any proceeding in which Ms. Stricker was involved. Although respondent made efforts to be transferred out of the Mental Hygiene Part, he was unable to obtain an immediate transfer and he remained in the part and presided over matters involving Ms. Stricker's appearance until the end of March 2000.

With respect to Charge III of the Formal Written Complaint:

21. On or about March 28, 2000, respondent had two telephone conversations with Sidney Hirschfeld, Director of MHLS, Second Judicial Department. These calls were the result of telephone calls to respondent from Dana Stricker.

22. In the first of the two conversations, respondent called Mr. Hirschfeld to complain that Ms. Stricker advised him that Marita McMahon, Principal Attorney of MHLS, Westchester County, was spreading rumors about respondent's personal life and his relationship with Ms. Stricker. Respondent further stated that he did not want Ms. Stricker to be harassed by Ms. McMahon as a repercussion of his telephone conversation with Mr. Hirschfeld. Thereafter, Ms. McMahon spoke to Ms. Stricker that day about Ms. Stricker's work habits.

23. Later that same day, Ms. Stricker called respondent again and

informed him that Ms. McMahon had already begun harassing her as a result of respondent's first telephone conversation with Mr. Hirschfeld. Thereafter, respondent called Mr. Hirschfeld a second time and demanded to know why Ms. McMahon was harassing Ms. Stricker.

24. During the second conversation with Mr. Hirschfeld, respondent further complained that Ms. McMahon had been abusive and vindictive towards Ms. Stricker for some time, prior to their telephone conversations; that respondent had other objections to Ms. McMahon that were unrelated to her treatment of Ms. Stricker; that he did not want Ms. McMahon in his courtroom and that Ms. McMahon should be transferred out of Westchester County. Respondent did not disclose to Mr. Hirschfeld that he and Ms. Stricker were involved in a romantic relationship.

25. Immediately after respondent's telephone calls to Mr. Hirschfeld, Ms. Stricker was assigned to a different supervisor. Subsequently, Ms. Stricker was reassigned to another county.

Additional Finding:

26. Respondent is regarded as a competent, honest, capable and intelligent judge, and in the event of a hearing, there would be no dispute that he has an excellent reputation for these qualities.

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), 100.3(A), 100.3(C)(1), 100.3(E)(1) and 100.4(A)(3) of the Rules Governing Judicial Conduct. Charges I through III of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Respondent has engaged in conduct that demonstrates insensitivity and inattention to the ethical and administrative responsibilities of his office.

It was improper for respondent to fail to advise his Administrative Judge of respondent's planned absences from the court for the better part of 31 consecutive days in order to attend a broadcasting course. As respondent was advised by the Administrative Judge's memorandum, it is essential for court administrators to be apprised of judges' proposed vacation schedules, which are an "important management tool" in planning assignments for judges, approving vacation requests for other court staff and avoiding staffing problems. Respondent should have recognized that his plan to attend the broadcasting course would be of significant concern to court administrators. Regardless of respondent's efforts to rearrange his court schedule and to provide for coverage in his absence, the impact on the operations of his court caused by such absences would be considerable. Indeed, despite his plan to be absent for 31 "half-days," respondent never came to court at all for two of the first eight days of the class, and on the other days, did

not arrive until 2:00 PM, after the most productive time in a court day was over. For obvious reasons, respondent's plan would not have been approved by his Administrative Judge.

Although respondent did seek approval to change the starting time of the once-a-week motion calendar to accommodate his class schedule, he did not disclose the reason for the requested change. Nor, in seeking approval for the 2:00 PM start once a week, did he take the opportunity to notify court administrators that he was planning a similar late start every day for a six-week period. Of course, by not seeking approval for his plans, respondent avoided having to face the possible consequence of having his request denied.

Respondent withdrew from the broadcasting course only after his absences were reported in the press. By enrolling in the course and attending the classes without approval for eight days, respondent failed to cooperate with other judges and court officials in the administration of court business and allowed his extra-judicial activities to interfere with the proper performance of judicial duties, in violation of the ethical rules (Sections 100.3[C][1] and 100.4[A][3] of the Rules Governing Judicial Conduct). Respondent also failed to give his judicial duties precedence over his other activities, in violation of Section 100.3(A) of the Rules.

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). When

the judge is involved in a romantic relationship with an attorney who is appearing before him, the judge's impartiality is certainly suspect. By presiding over ten matters under such circumstances, respondent clearly violated the ethical standards. Notwithstanding there is no evidence that his rulings were influenced by his personal relationship with the attorney – indeed, in each case his decision was contrary to the attorney's position – respondent's conduct was improper. Matter of Robert, 1997 Ann Report of NY Commn on Jud Conduct 127, *accepted*, 89 NY2d 745 (1997). To his credit, respondent made efforts to be transferred out of the attorney's part, but, having recognized the conflict, he should not have continued to preside in the attorney's cases.

Respondent's misconduct was exacerbated by his efforts to undermine the attorney's supervisor based upon the attorney's allegations that the supervisor was harassing her and spreading rumors about respondent's relationship with her. In two telephone calls to the director of the agency where the attorney worked, respondent complained about the supervisor's conduct, told the director that he did not want the supervisor in his court, and said that the supervisor should be transferred out of the county. Because of his personal relationship with the attorney (which he did not disclose), respondent's views about the matter could not be impartial. His self-serving efforts to have the supervisor barred from his court and transferred from the county -- at least partly in retaliation for her conduct towards an attorney with whom respondent was romantically involved -- were reprehensible. Respondent should have recognized that, as

the Court of Appeals has stated, his words would be regarded "with heightened deference simply because he is a judge" and would "reflect, whether designedly or not, upon the prestige of the judiciary." Matter of Steinberg v. State Commn on Jud Conduct, 51 NY2d 74, 81 (1980); Matter of Lonschein v. State Commn on Jud Conduct, 50 NY2d 569, 572 (1980). By interjecting himself into the conflict between the attorney and her supervisor, respondent conveyed the appearance that he was lending the prestige of his judicial office to advance the private interests of the attorney, and himself, in violation of Section 100.2[C] of the Rules.

Notwithstanding his ethical misdeeds, respondent ruled against the position being asserted by the attorney with whom he was romantically involved, which avoids the suspicion that his judicial decisions were based on personal considerations. That finding permits the Commission to accept the agreed statement and the joint recommendation for censure.

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

Judge Marshall, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Judge Peters, Mr. Pope and Judge Ruderman concur.

Mr. Berger and Judge Ciardullo dissent and vote to reject the agreed statement of facts on the basis that the disposition is too lenient.

Judge Luciano was not present.

CERTIFICATION

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

Dated: November 19, 2001

Henry T. Berger, Esq., Chair
New York State
Commission on Judicial Conduct