

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

ETTORE A. SIMEONE,

a Judge of the Family Court, Suffolk
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 (Jennifer Tsai, Of Counsel) for the Commission

Vincent J. Messina, Jr., for Respondent

The respondent, Ettore A. Simeone, a judge of the Family Court, Suffolk
County, was served with a Formal Written Complaint dated May 26, 2004, containing one
charge. Respondent filed an answer dated June 7, 2004.

On September 14, 2004, 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 either admonished or censured and waiving further submissions and oral argument.

On September 23, 2004, the Commission approved the agreed statement and made the following determination.

1. Respondent was admitted to the practice of law in New York in 1981. He has been a judge of the Family Court, Suffolk County, since August 1997.
2. Suzanne Mitsos is not an attorney. She is the director of Montfort House, a residential youth services facility in Suffolk County.
3. Respondent and Ms. Mitsos first met at a professional conference in 1998, when Ms. Mitsos was associated with Hope House Ministries, an affiliate of Montfort House.
4. In December 2001, the relationship between respondent and Ms. Mitsos became romantic.
5. From on or about December 21, 2001, to in or about May 2003, respondent remanded numerous Persons in Need of Supervision (PINS) to non-secure detention. The Department of Probation assigned some of the PINS to Montfort House, one of two primary residential youth services facilities in Suffolk County. Respondent was aware of the assignments. Respondent continued to preside over matters involving

PINS remanded to Montfort House, notwithstanding that he was involved in a romantic relationship with Ms. Mitsos, the director of Montfort House.

6. From on or about December 21, 2001, to in or about May 2003, when she appeared in respondent's court on matters related to Montfort House, Ms. Mitsos sat at the same table with and consulted with Jane Bernstein, Esq., the law guardian representing PINS remanded to Montfort House. Ms. Mitsos sometimes addressed the court on the record to advocate positions in substantive cases on which respondent had to pass judgment. In many cases, Ms. Mitsos submitted behavioral reports concerning PINS to the court. Her stated views sometimes opposed the recommendations of the county attorney, the Probation Department, Child Protective Services, and the Office of Children and Family Services.

7. Respondent never disclosed to the parties and the attorneys his relationship with Ms. Mitsos.

8. Respondent recognizes the impropriety and appearance of impropriety in his conduct, notwithstanding his effort in every case to render decisions on the merits.

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) of the Rules Governing Judicial Conduct and should be disciplined for cause, pursuant to Article 6, Section 22 of the New York State Constitution and Section 44(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). As respondent has stipulated, he violated that standard by presiding over numerous matters involving a youth services facility at a time when he was romantically involved with the facility's director. Over a period of 17 months, respondent remanded youths who were then assigned to the facility, and he continued to preside over proceedings involving those youths, notwithstanding his personal relationship with the facility's director, who appeared in respondent's court, filed reports and advocated positions on which he had to pass judgment. On occasion, those positions were contrary to those of the County Attorney and other advocates in respondent's court.

Notwithstanding respondent's efforts to be impartial, respondent's conduct violated his duty to avoid impropriety and the appearance of impropriety, and each time he favored the position advocated by the facility's director, he raised a suspicion that his ruling was influenced by personal considerations. Sections 100.1 and 100.2 of the Rules; *Matter of Robert*, 1997 Annual Report 127, *accepted*, 89 NY2d 745 (1997); *Matter of DiBlasi*, 2002 Annual Report 87 (Comm'n on Jud Conduct).

In *DiBlasi*, a judge was disciplined, *inter alia*, for presiding for two months over cases involving an attorney for a social services agency with whom he had a romantic relationship, notwithstanding the judge's prompt efforts to be transferred out of the attorney's part. Here, there is no such mitigation, and respondent continued to preside

over his friend's cases for a significant period. Each time his friend appeared in his court, respondent should have been reminded of the conflict presented and should have recognized his ethical obligation not to preside in cases involving the facility.

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

Mr. Goldman, Judge Ciardullo, Ms. DiPirro, Mr. Felder, Judge Peters and Judge Ruderman concur.

Mr. Coffey and Mr. Emery vote to accept the agreed statement of facts but dissent from the sanction and vote to admonish respondent.

Judge Luciano did not participate.

Ms. Hernandez and Mr. Pope were not present.

CERTIFICATION

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

Dated: October 6, 2004



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