

## **PUBLIC ADMONISHMENT OF FORMER JUDGE VINCENT P. DIFIGLIA**

The Commission on Judicial Performance has ordered former Judge Vincent P. DiFiglia publicly admonished pursuant to Article VI, section 18(d) of the California Constitution and Commission Rule 115, as set forth in the following statement of facts and reasons found by the commission:

### STATEMENT OF FACTS AND REASONS

Judge DiFiglia was a judge of the San Diego Superior Court for sixteen years; he retired in November 2003. His last term began in 2001.

In 1999, the case of *Border Business Park, Inc., v. City of San Diego* was assigned to Judge DiFiglia. Lead counsel for the plaintiff filed an application requesting information about the judge's relationship with the Office of the San Diego City Attorney, where the judge had worked at one time. A conference was held, but no disclosures were placed on the record.

In April 2000, attorney Vincent Bartolotta became associated as co-counsel for the plaintiff, and he represented the plaintiff at the jury trial conducted before Judge DiFiglia in late 2000. Before the case went to the jury, Judge DiFiglia had decided a pivotal legal issue—inverse condemnation liability—in favor of the plaintiff. In January 2001, the jury returned a verdict of \$94.5 million in favor of the plaintiff. Judge DiFiglia at no time disclosed on the record any relationship he had with attorney Bartolotta.

Judge DiFiglia had a long-term personal relationship with Mr. Bartolotta. In 1992, Judge DiFiglia was privately admonished by the Commission on Judicial Performance for conduct that included accepting gifts of golf tournament fees from Mr. Bartolotta and his partner in 1990 and 1991, and failing to disclose on the record his relationship with these attorneys or his participation in golf tournaments at their expense. After receiving the private admonishment in 1992, Judge DiFiglia maintained a friendly relationship with Mr. Bartolotta, which included playing golf with Mr. Bartolotta on four to six occasions at his own expense. The judge saw Mr. Bartolotta at bi-monthly dinner meetings of the American Board of Trial Advocates and at bench-bar mixers, and would sometimes have drinks with Mr. Bartolotta at a bar or restaurant. The judge also attended a Christmas Eve party at Mr. Bartolotta's home prior to 1993.

An article about Judge DiFiglia's prior commission discipline involving failure to disclose receipt of gifts from Mr. Bartolotta appeared in the press shortly after the jury verdict. After a hearing on a request filed by the City of San Diego for information about the judge's relationship with Mr. Bartolotta, Judge DiFiglia disqualified himself from the case.

Judge DiFiglia's failure to disclose on the record any information about his relationship with Mr. Bartolotta was contrary to canon 3E(2) of the California Code of Judicial Ethics, which provides that in all trial court proceedings, a judge "shall disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no actual basis for disqualification." Judge DiFiglia failed to make such disclosure despite the fact that he had been privately admonished by the commission in 1992 for failing to disclose on the record his relationship with Mr. Bartolotta and his partner, and his acceptance of golf tournament fees from them. This was considered a factor in aggravation by the commission.

Judge DiFiglia's failure to disclose on the record his past employment with the city attorney's office also was contrary to canon 3E(2).

In addition, while the *Border* case was in trial before him, Judge DiFiglia escorted a secretary then employed in Mr. Bartolotta's office to a Christmas party hosted by the American Board of Trial Advocates. This conduct was contrary to canon 2A, which requires judges to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Judge DiFiglia's conduct as described above was, at a minimum, improper action.

Judge DiFiglia's conduct occurred in 2001. Thereafter, an appeal in the *Border* case, in which the issue of whether Judge DiFiglia was disqualified as a matter of law due to his relationship with Mr. Bartolotta, and whether the judge's prior commission discipline arising out of the that relationship conclusively demonstrated an appearance of partiality, was pending until September 19, 2006, when the appeal was decided without reference to this issue. Because the central issue before the commission was raised in the appeal, the commission deferred action while the appeal was pending in order to avoid the risk of inconsistent adjudications and perceived interference in an ongoing case.

Although Judge DiFiglia retired in 2003 and is not sitting on assignment, he continues to perform adjudicative functions as a private judge. In light of his continued performance of judicial functions, and in order to preserve public confidence in the integrity and impartiality of the judiciary, the commission determined to issue this public admonishment.

Commission members Judge Frederick P. Horn, Mrs. Crystal Lui, Mr. Jose Miramontes, Mrs. Penny Perez, Judge Risë Jones Pichon, Ms. Barbara Schraeger, and Mr. Lawrence Simi voted to impose a public admonishment. Commission members Mr. Marshall Grossman and Justice Judith D. McConnell were recused. Commission members Mr. Michael Kahn and Ms. Patricia Miller did not participate.

January 9, 2007