WPP

Code of Conduct

WPP and its companies operate in many different markets and countries throughout the world. In all instances, we respect national laws and industry codes of conduct.

We, the directors and employees of all companies in the WPP Group ("the Group"), recognise our obligations to all who have a stake in our success including share owners, clients, employees, and suppliers. Information about our business shall be communicated clearly, and accurately in a non-discriminatory manner and in accordance with local regulations.

We select and promote employees on the basis of their qualifications and merit, without discrimination or concern for race, religion, national origin, colour, sex, sexual orientation, gender identity or expression, age or disability.

We believe that a workplace should be safe and civilised, we will not tolerate sexual harassment, discrimination or offensive behaviour of any kind, which includes the persistent demeaning of individuals through words or actions, the display or distribution of offensive material, or the use or possession of weapons on WPP or client premises.

We will not use, possess or distribute illegal drugs. We will not report for work under the influence of drugs or alcohol.

We will treat all information relating to the Group's business, or to its clients, as confidential. In particular, 'insider trading' is expressly prohibited and confidential information must not be used for personal gain.

We will not knowingly create work which contains statements, suggestions or images offensive to general public decency and will give appropriate consideration to the impact of our work on minority segments of the population, whether that minority be by race, religion, national origin, colour, sex, sexual orientation, gender identity or expression, age or disability.

We will not let personal or family gain directly or indirectly engage in any activity which competes with companies within the Group or with our obligations to any such company.

We will not offer any items of personal inducement to secure business. This is not intended to prohibit appropriate entertainment or the making of occasional gifts of minor value unless the client has a policy which restricts this.

We will not accept for our personal benefit goods or services of more than nominal value from suppliers, potential suppliers or other third parties.

We will not have any personal or family conflicts of interest with our businesses or with our suppliers or other third parties with whom we do business.

No corporate contributions of any kind, including the provision of services or materials for less than the market value, may be made to politicians, political parties or action committees, without the prior written approval of the Board of WPP.

We will comply with all applicable local laws and regulations, and any other laws with an international reach, such as the US Foreign Corrupt Practices Act, where relevant.

Lippman, P.J., Friedman, Sullivan, Gonzalez, Catterson, JJ.

2132 Kathryn Jordan, Index 118785/99
Plaintiff-Respondent-Appellant,

-against-

Bates Advertising Holdings, Inc.,
formerly known as AC&R Advertising, Inc.,
Defendant-Appellant-Respondent,

Bates Advertising Holdings (USA), Inc.,
Defendant.

Klein Zelman Rothermel LLP,
Non-Party Intervenor-Respondent.

Drinker Biddle & Reath, LLP, Washington, DC (Gregory W. Homer, of the District of Columbia Bar, admitted pro hac vice, of counsel), for appellant-respondent.

Podewitz & Meister LLP, New York (Robert A. Meister of counsel), for respondent-appellant.

Klein Zelman Rothermel LLP, New York (Laurence J. Lebowitz of counsel), for respondent.

Amended judgment, Supreme Court, New York County (Rolando T. Acosta, J.), entered January 10, 2007, inter alia, awarding plaintiff damages, after jury trial, on her cause of action for disability discrimination, in the principal amounts of $2,000,000 compensatory and $500,000 punitive, plus attorneys' fees in the principal total of $257,428.71, and imposing a $5,000 sanction against her, and bringing up for review an order, same court and Justice, entered February 27, 2006, which denied the motion by

defendant Bates Advertising Holdings, f/k/a AC&R Advertising for judgment notwithstanding the verdict, unanimously modified, on the law, the motion granted, the verdict set aside, and the judgment insofar as it awarded damages and attorneys' fees vacated, and otherwise affirmed, without costs. The Clerk is directed to enter an amended judgment imposing the sanction and dismissing the complaint.

In this disability discrimination action, plaintiff was hired as a senior vice president by a small New York City advertising agency, AC&R Advertising (AC&R) in January 1994 after working as a consultant for the company since November of the preceding year. Plaintiff's responsibilities included providing strategic planning on AC&R's accounts, in particular on the Foot Locker and Estee Lauder accounts. During the summer of 1994, the company merged with Bates Advertising Holdings, USA, Inc. (Bates USA) and changed its name to Bates Advertising Holdings, Inc.[1] Plaintiff was terminated less than a year later in March 1995.

In January 1996, plaintiff brought disability, sex and age discrimination charges before the New York State Division of Human Rights and the Equal Employment Opportunity Commission. Plaintiff then brought a federal action against AC&R and Bates

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[1]For clarity, the company will be referred to as AC&R throughout this memorandum.

USA, alleging discharge in violation of Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA), and the New York State and City Human Rights Laws.

On August 9, 1999, the District Court (Rakoff, J.) granted both defendants summary dismissal of the federal claims with prejudice and dismissed the state claims without prejudice. On February 16, 2001, the judgment was affirmed. Meanwhile, on September 8, 1999, plaintiff commenced this action under the State and City Human Rights Laws (Executive Law § 296 and Administrative Code of City of NY § 8-107) claiming, inter alia, termination of her employment because she was perceived to be disabled. Plaintiff sought damages for lost wages and emotional distress, punitive damages and attorneys' fees. Defendants moved to dismiss on statute of limitations and collateral estoppel grounds, relying on the federal holding that plaintiff had not presented sufficient evidence to discredit their stated reason for her termination.

By decision dated January 8, 2001, Supreme Court (Louis York, J.) dismissed the action, holding, inter alia, the disability claim untimely. On appeal, this Court reinstated the claim for disability discrimination (*Jordan v Bates Adv. Holdings*, 292 AD2d 205 [2002]).

Subsequently, after a jury trial, the plaintiff was awarded $2 million in economic damages for termination by AC&R on the basis of disability. Defendant AC&R moved for judgment notwithstanding the verdict, remittitur or a new trial. The court denied defendant's motion, rejecting defendant's sufficiency argument. The court found that plaintiff had proved a prima facie case of termination based on perceived disability, and noted that the jury's rejection of the employer's stated legitimate reasons permits an inference of discrimination.

On appeal, defendant does not raise any issue with plaintiff's prima facie case, but maintains that she did not prove that defendant's proffered legitimate reasons were pretextual.

For the reasons set forth below, this Court agrees.

In order to recover under section 296 of the Executive Law, a three part analysis is required to determine whether a plaintiff has met his/her burden in establishing a discrimination claim (see *Stephenson v Hotel Empls. & Rest. Empls. Union Local 100 of AFL-CIO*, 6 NY3d 265, 270 [2006]). A plaintiff in a discriminatory termination action has the initial burden of establishing a prima facie case of discrimination, the burden then shifts to the defendant to rebut the prima facie case with a legitimate reason, and then again shifts to the plaintiff to show

that defendant's reasons are pretextual. The burden of persuasion of the ultimate issue of discrimination always remains with the plaintiff (*Id.* at 270-271).

At trial, plaintiff established that she was diagnosed with multiple sclerosis (MS) in 1992. She further testified that she was using a cane as a result of her MS when she was hired by AC&R's executive vice president Douglas Fidoten as a consultant in November 1993. When she was asked about the cane, she said it was due to a skiing injury. In December 1993, she met with AC&R president Steve Bennett and chief operating officer Barry Koenig, who both asked about her use of a cane and again she gave the skiing injury lie. Bennett offered plaintiff a permanent job which included working on the Foot Locker account. She was subsequently made an executive vice president at an annual salary of $125,000.

According to plaintiff, in February-March 1994, Bennett, Koenig and Fidoten repeatedly questioned her about her use of the cane and inquiries about the cane were still being made after August 1994. She felt that they believed she had a disability, and that if she revealed the truth she would be fired. However, she did not complain to anyone at AC&R about the inquiries as to her use of the cane. Plaintiff further testified that, at a rehearsal for a client presentation, Fidoten knocked over her

cane which was leaning on her chair, and laughed with another executive, while commenting sarcastically "we've got a cripple." Plaintiff also did not mention this comment to anyone at the company.

In the summer of 1994, AC&R merged with Bates, its parent company. Plaintiff testified that, in December 1994 Fidoten told her that AC&R cannot "afford everyone." She was never reviewed or evaluated, but by the beginning of 1995, plaintiff had been relieved of her responsibilities on the Estee Lauder account. She was subsequently told that she was being terminated effective March 1995.

Both Bennett and Fidoten, as well as other agency executives, testified that plaintiff's termination was financially motivated, and that a merger and the loss of major clients had precipitated layoffs of a large portion of the workforce, including executives more highly placed than plaintiff.

Bates's former chief financial officer, Art D'Angelo testified that as a result of the Bates-AC&R merger, approximately half of the staff at AC&R was terminated. D'Angelo believed that Fidoten had terminated plaintiff as a cost cutting measure since account planning activities at Bates and AC&R were duplicative. He testified that in late 1994-early 1995, the

parent of both Bates and AC&R, Saatchi & Saatchi, had lost major accounts when Saatchi's founders left. This required restructuring the Bates worldwide network and making personnel cuts as a way of cutting costs.

Bates's personnel manager, Anne Melanson, testified that there were many layoffs for budget reasons. While it was customary to try to transfer people to related entities, this was not possible because during 1994 both of AC&R's corporate parents (Saatchi and Bates) were losing business.

Fidoten testified that around the time plaintiff was terminated one of AC&R's biggest accounts, Estee Lauder, was looking at other agencies, an action which threatened AC&R's viability. He further testified that many jobs were eliminated to avoid duplication when AC&R was merged with Bates. They included senior executives at AC&R such as Koenig, a vice chairman and its chief operating officer, and an executive vice president, Shelly Marks. Fidoten acknowledged that he had decided to terminate plaintiff on the grounds that she was one of the most expensive employees and Bates already had many others performing her planning function. Fidoten further testified that plaintiff was not replaced. Instead, AC&R provided services to Footlocker by using Bates's staff.

The defendant's overwhelming and consistent evidence of

financial reasons for layoffs in the light of the merger and the loss of major client accounts was undisputed. Thus, the finding that defendant failed to demonstrate a legitimate reason for terminating plaintiff was against the weight of the evidence.

Moreover, plaintiff presented no evidence of pretext, and so failed to controvert defendant's evidence of a legitimate nondiscriminatory reason for her termination. On the contrary, plaintiff acknowledged that the merger in 1994 caused many layoffs for economic reasons. She admitted that when she was terminated, Estee Lauder, a major account she worked on, was considering taking its business elsewhere, and that AC&R was facing financial pressures.

Further, in plaintiff's separation memo in February 1995 in which she sought references and help with networking, she wrote: "For the purposes of outside communication, I think the elimination of my position as part of the Bates USA AC&R integration would be sufficient."

Additionally, while plaintiff elicited evidence from Fidotex that a non-disabled woman in her late 20s-mid 30s, Jill Kosoff, was hired in November 1994 and put to work on the Footlocker

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[4] In a separate action against a former employer, she had also testified that the reason for her termination by AC&R was "they had layoffs. They lost big accounts."

account, performing the planning function that plaintiff had performed, there was no testimony as to the employee's salary. By failing to come forth with any evidence that hiring Ms. Kosoff was just as expensive, or that hiring her and also using Bates' personnel was just as expensive as keeping plaintiff employed, plaintiff failed to meet her burden as a matter of law.

Thus, because there was no evidence to rebut defendant's showing of a legitimate reason for the termination, we find that no jury could have reached the verdict in this case on any fair interpretation of the evidence. Therefore, the verdict was against the weight of the evidence (see *White v New York City Tr. Auth.*, 40 AD3d 297 [2007]). Since it was plaintiff's ultimate burden to prove discrimination and also her burden to prove that the proffered legitimate reason for her termination was pretextual, we find that the motion to set aside the verdict should have been granted. Further, inasmuch as plaintiff, as a result of our decision, is no longer the prevailing party, she is not entitled to any award of attorneys' fees (see *McGrath v Toys "R" Us, Inc.*, 3 NY3d 421, 429 [2004]). It is thus unnecessary to reach plaintiff's contentions regarding such fees.

Finally, the imposition of a sanction of $5,000 on the plaintiff was a proper exercise of discretion. Plaintiff's conduct after the court directed a hearing to determine the

amount of attorneys' fees was egregious and repeated. The record shows that plaintiff pro se relentlessly bombarded the court with letters and faxes accusing the court of ex parte communications, declaring her intention to depose the court, and claiming that her now-former trial attorney had committed serious errors costing her millions in damages.[1] Although the court recognized that plaintiff was proceeding pro se after trial, it properly

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[1] Plaintiff's numerous letters to the court between March and August 2006 resulted in two major admonitions of her by the court. On April 19 2006, the court **ordered** her (boldface in the letter) not to contact the court or its staff except as to issues pending before it, and directed that as to those issues she must copy defendants. However, plaintiff's relentless letter-writing continued until in open court on June 29, the judge repeated that he did not want *any* further communication with the court until a decision was rendered ("zero communication...not a letter from your doctor or a proposal to submit a letter....I beg you to just leave me alone.").

The court's clear statement notwithstanding, by letter dated July 18, 2006, plaintiff again accused Justice Acosta of ex parte communications (a "shameful charade...while you looked the other way"), complained of the delay in deciding the fee matter, and asked that he transfer it to another judge. On August 12, 2006, plaintiff moved to "recall" the court's decision, recapping her letter accusations; moved, using strong language, for Justice Acosta's recusal on the fee matter on the ground of bias; and sought administrative relief from another Justice whereupon the court sanctioned plaintiff, chronicling plaintiff's communications especially the July 18, 2006 letter.

observed that she was nevertheless obliged to comply with court orders and not make baseless accusations regarding the court's integrity.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: DECEMBER 27, 2007

CLERK

Top NY Court Blinks in 'First Department' WPP Discrimination Power Play

Mon Nov 24, 2008 5:48pm EST

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FOR IMMEDIATE RELEASE:
February 5, 2009

E.N.D. CONDEMNS PATTERSON APPOINTMENT OF JUDGE LIPPMAN AS CHIEF JURIST FOR COURT OF APPEALS; CITES "CASE FIXING"

E.N.D. ( ) has publicly condemned Governor Patterson's appointment of Judge Jonathon Lippman to head the Court of Appeals as a blatantly political maneuver aimed at gutting the state's anti-discrimination laws and making it easier for employers to justify discriminatory acts at a time when the governor admits the York Courts desperately need "judicial reform". Passing over another eminently qualified female jurist, acting Chief Judge Carmen Cirpatrick, a female Hispanic jurist whom Patterson characterized as a "trailblazer for women" along with outgoing Chief Judge Judith Kaye, Governor Patterson appointed Judge Lippman under the usual cloak of expediency and secrecy that has accompanied virtually all of his appointments. The appointment follows Caroline Kennedy's abrupt and mysterious withdrawal after meeting with the Governor.

E.N.D. President, Kathryn Jordan, stated that she personally is personally familiar with the politics of Judge Lippman who she has claimed has frequently "legislated from the bench" when it suited his purpose. "*Lippman represents everything that we don't want in jurists at this critical time when politics, corruption and cronyism are finally being vetted from our government. He personally has rendered decisions that have weakened the Anti Discrimination laws in this state and fixed jury cases on appeal legislating changes to the law from the bench.*" Further Jordan claimed, Judge Lippman "*puts politics over justice*" and has "*outrageously abused his authority to legislate unfavorable changes to our ADA and Title VII laws that are clearly intended to undermine the equal rights agenda of these statutes*".

Lippman was part of a panel of First Department judges who reversed a jury verdict that Jordan won in April 2005 in her case of disability discrimination against WPP Group's Bates Advertising AC&R in December of 2007. Although the evidence of discrimination was indisputable, with senior senior executives at AC&R and Bates admitting in sworn depositions to knowing about the discrimination and failing to take any remedial action, WPP, which publishes an Code of Conduct that precludes discrimination, decided to "appeal" the case "on the law" even though Drinker Biddle, WPP's attorneys, had agreed to the jury instructions. Customarily this kind of frivolous appeal by a defendant employer would be dismissed as legally deficient. The First Department panel including Judge Lippman not only granted the appeal but vocalized a clear bias about the case. Under New York Law jurists are required to recuse themselves if they have a bias about a case. Lippman and his fellow jurists refused to recuse themselves and instead manipulated facts and law to conform with their biases and "legislate from the bench" adverse changes to the legal standard for proving pretext in discrimination cases. On appeal by WPP, Judge Lippman issued a decision attacking Jordan, a disabled litigant with Multiple Sclerosis, for complaining about the conduct of the trial judge who upheld the jury verdict, Honorable Rolando Acosta, presumptively characterizing her complaints as "baseless allegations". Jordan has consistently denied

that her allegations were baseless and asserted that they were directed at her to divert attention from judicial misconduct. Jordan, who took a voluntary polygraph, complained that Acosta held "ex parte" meetings with Jordan's discharged counsel and threatened her with sanctions if she did not concede to his demands regarding her former attorney. Jordan has repeatedly asserted that Acosta abused his authority by allowing her discharged attorney access to influence him and acting to intimidate her into conceding to his demands regarding her discharged attorney's demands for over a million dollars in legal fees. After Judge Acosta attacked her in his Final Judgment as "contemptuous" for making the same "baseless" allegations, he finally recused himself but not before damaging Jordan's credibility. There is an ongoing debate as to whether Acosta's ruthless actions were simply lack of judicial restraint or whether he was signaling a change of allegiance to his new First Department colleagues. Acosta, who rose through the ranks of the Human Rights Division, was promoted shortly after the attack on Jordan to the First Department.

During Jordan's case on appeal by WPP to the First Department Appellate Division, Judge Lippman and the panel made no attempt to investigate the veracity of Acosta's attacks or his motivation (after upholding the jury verdict) and adopted Judge Acosta's position as fact. They then wrote a decision that "read like something out of a 1960's employment manual" Jordan said, and which criticized Jordan for "not telling anyone" she was disabled at the time of her hire or during the period she claimed she was being harassed about being "a cripple" by her supervisors. They also paraphrased her testimony and manipulated the facts to support their operative bias. Lippman's Decision completely disregarded all of the evidence of discrimination, including sworn admissions from senior management that they knew Jordan was being harassed based on the perception of her being disabled, but took no remedial action, sworn admissions by the Decision Maker that he "did not know if it was more cost effective" to fire Jordan or not, and completely disregarded Jordan's own testimony that there was no EEO department to "complain to". Instead, they focused on the admissibility of a minor document attesting to Jordan's non disabled replacement's compensation, paraphrased Jordan's testimony, blamed her for not reporting the discrimination to her harassers, and hung their legal argument on the fact that the employer claimed they had "financial problems" and that it was more "cost effective" to fire Jordan, a "fact" that was never proven. Jordan, an EVP and the only disabled executive at the time at AC&R (the sister agency for Estee Lauder and Foot Locker at the time), was also passed over for the top Bates Planning job, although she was proven to be qualified. Jordan was not able to prove the "failure to promote" claim after WPP's lawyers at Drinker Biddle suppressed evidence and lied about the relationship between the agencies during discovery. "The case was fixed", Jordan claims.

WPP's decision to try the case, knowing that executives had admitted wrongdoing in sworn depositions, was considered frivolous at the time. In April 2005, after an 11 day jury trial, a verdict was rendered against WPP/Bates for the "wrongful discharge" cause of action and a $2.5M award rendered. The damages were 60% reduced from the "make whole" expert report.

However, it was the decision to appeal the verdict, knowing that WPP's attorneys at Drinker Biddle had agreed to the jury instructions, or the law of the case that raised eyebrows. Under the law, if a party agrees to the jury instructions they cannot then go

back and contest the outcome based on "legal error" as WPP did. Normally a case like this would be rejected as frivolous and WPP would have been sanctioned. Instead, Lippman and the rest of the First Department panel, *reversed* the jury verdict and effectively legislated new law that significantly weakened the ADA and Title VII by allowing employers to simply assert a "legitimate reason" (like financial reasons) as pretext to dispose of allegations of discrimination.

Under Lippman's order, all an employer has to do to dismiss a charge of discrimination is to proffer, but not prove, a "legitimate reason" and this rebuts any evidence of discriminatory acts or motivation. Jordan and her appellate attorney Robert Meister have repeatedly argued that this is a misinterpretation and misapplication of the McDonnell Douglas standard and argued in their briefs to the New York Court of Appeals that the Decision by the First Department Appellate Division to reverse the jury verdict was "legal error" and intended to undermine the ADA and Title VII. The New York Court of Appeals refused to hear Jordan's appeal even though she and Meister proved that "courts outside New York" have aligned around a more fair and meaningful standard, the "real reason" standard for proving pretext, which requires that the employer's motivation be considered in assessing discrimination. The same week NYCOA rejected Jordan's petition it heard the Bianca Jagger eviction case.

To add more intrigue and suspicion to the judicial appointment process, Jordan's trial judge Honorable Rolando Acosta was appointed by Elliot Spitzer to the First Department during the period when he attacked her complaints about him, unbeknownst to Jordan at the time. Acosta, like Lippman, had violated several of the Codes of Conduct that judges are required to adhere to. The First Department panel which included Lippman ignored these Codes when they refused to recuse themselves but then openly attacked Jordan in their Opinion.

"*There is no mechanism for checking the authority of the judiciary*", Jordan has argued. "*Judges basically have limitless authority. This by definition encourages and enables corruption and abuse of power*".

The only regulatory body overseeing the judicial system is the Commission on Judicial Conduct, a body whose lead investigator interviews judges and attorneys on cable television, a clear conflict of interest.

E.N.D. plans to publish all of the Decisions by Lippman and all of the facts upon which he "relied". "*Now the jury will be the Court of Public Opinion*", Jordan asserted.

Jordan, who has been relentlessly attacked by these jurists over the last 13 years, is actually a high profile socially and politically connected individual who has repeatedly asserted that she is "*not anti employer, just anti-discrimination. There's a world of difference*". She also cautions that in these challenging economic times that "*discrimination will be on the rise and employers need to be especially alert and learn from history, not repeat it*". Jordan, who has been a high level exec herself, does not propose that employers replace highly qualified employees with disabled applicants, but that the Disabled are given an "equal opportunity" for consideration. "*That is the Law*", Jordan said, "*and it is not being enforced.*" Jordan believes that the actions of the First Department are inconsistent with the intentions of the Supreme Court especially with respect to "legislating from the bench". Studies show disabled workers are more productive and more loyal than non disabled workers, Jordan said.

Governor Patterson's decision to appoint Judge Lippman as the highest judge in New York is clearly intended to send a message that he will oppose President Obama's "change" agenda on the judicial front. "*Judge Lippman is obviously an intelligent jurist, but intelligence alone is not the criteria. We need judges who have integrity and respect for the Law*", Jordan stated. "*The problem is the judicial selection process itself which is inherently flawed, and smacks of cronyism, sexism and corruption. As long as it justice is in jeopardy, E.N.D. will continue to fight for change*".

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Paterson Picks Chief Judge Nominee

By JOHN ELIGON
Published: January 13, 2009

Gov. David A. Paterson nominated Justice Jonathan Lippman on Tuesday to be the next chief judge of the New York Court of Appeals, the state's highest court.

Nathaniel Brooks for The New York Times
Jonathan Lippman will succeed Judith S. Kaye, the first woman on the Court of Appeals and the first female chief judge.

Justice Lippman, 63, the presiding justice of the First Judicial Department of the Appellate Division of State Supreme Court, one of the state's midlevel appeals courts, is expected to be introduced at a news conference in Albany on Wednesday.

Despite the nomination, Mr. Paterson renewed his criticism of the selection process.

The Commission on Judicial Nomination gave Mr. Paterson a list of seven male candidates last month, and the governor was required to select one of them to replace Judith S. Kaye, who was the first woman on the Court of Appeals and the first female chief judge..

"Though I am thrilled to choose Judge Lippman to serve as our next chief judge, I firmly believe that we must revise the process for future judicial nominations to ensure that those under consideration represent all New Yorkers," the governor said on Tuesday. "That is why I will propose revising the judicial nomination statute."

The selection process was also criticized by State Senator John L. Sampson, a Brooklyn Democrat and chairman of the Senate Judiciary Committee, who said he would hold hearings concerning the criteria used by the commission in its selection process.

Justice Lippman's nomination needs the confirmation of the State Senate.

As the chief judge, he would sit on the state's high court, as well as run the entire state court system, which has a budget of more than $2 billion.

He was widely considered to be the choice favored by Ms. Kaye, who was forced to step down at the end of last year after reaching the mandatory retirement age of 70. Ms. Kaye served 25 years on the court and 15 years as chief judge, the longest tenure of any chief judge in state history.

Justice Lippman also has the support of Sheldon Silver, the speaker of the Assembly and a Manhattan Democrat.

Justice Lippman served under Ms. Kaye as the state's chief administrative judge from 1996 through 2007. As a confidant of Ms. Kaye's, Justice Lippman is expected to continue some

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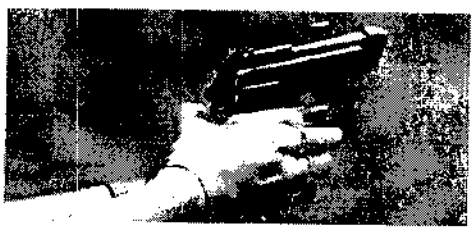

of the innovative approaches that Ms. Kaye championed, like drug courts and domestic violence courts.

"He was my vital partner in those initiatives," Ms. Kaye said Tuesday in an interview.

"I couldn't be happier," she added. "I think he has a proven quality both on the judicial end and on the administrative end."

Ms. Kaye said Justice Lippman would be particularly effective during the economic downturn.

"In these very difficult times, I always relied on him for his unique familiarity with the budget," she said. "He knows how every penny is spent in the court system."

While Ms. Kaye has been widely regarded as having reformed the courts, a major issue lingers: judicial pay raises. Judges in the state have not received a pay increase in 11 years, and Ms. Kaye filed a lawsuit last year seeking one.

Mr. Lippman has spent his entire legal career in the state court system. He graduated from New York University Law School in 1968 and took an entry-level court job.

In 1989, he became the deputy chief administrator for management support, responsible for the day-to-day management of the court system. In 1995, Gov. George E. Pataki appointed him a judge of the New York Court of Claims. In 2005, he was elected to the State Supreme Court for a 14-year term. Gov. Eliot Spitzer assigned Justice Lippman to the appellate division in May 2007.

A version of this article appeared in print on January 14, 2009, on page A28 of the New York edition.

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End Discrimination Now (E.N.D.)

954 Lexington Avenue
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February 10, 2009

HONORABLE GOVERNOR DAVID A. PATTERSON
State Capitol
Albany, NY 12224

Re: **URGENT** : **Proposed Nomination of Judge Jonathan Lippman as Chief Justice of New York Court of Appeals**

Dear Governor Patterson:

I am contacting you on behalf of E.N.D. on a matter of supreme urgency: your proposed appointment of Judge Jonathon Lipmman, and your recognition that the judicial nomination process needs to be reformed. **We strongly oppose the appointment of Judge Jonathon Lippman as Chief Judge for the New York Court of Appeals**. We believe appointing Judge Lippman would be catastrophic to the interests of people in protected classes in the workplace and those leading the fight against discrimination. Judge Lippman has proven himself to be a ruthless manipulator of judicial power with the goal of undermining the nation's anti-discrimination laws. Discrimination, especially against the disabled, will be rampant and we need tough anti-discrimination jurists who can work with employers collaboratively but still enforce our laws. Judge Lippman has proven himself to be unqualified for such a role.

We do support judicial reform however and hope that a "judicial ezar" is appointed in the near future who is not part of the insular corrupt judicial and legal system. There has been a steady deterioration in the quality and integrity of judges in New York and the failure of these jurists to *enforce* our nation's and states laws. Judges now feel entitled to fix cases for employers, with the expectation that benefits like "recommendations" will be rendered in the future. Judge Lippman is one of these jurists. Because of Judge Lippman, employers are publishing EEO policies that are "toothless tigers" and that they have no intention of honoring nor attempting to enforce. This is why there has been no improvement in the status of the Disabled or other protected classes. Our judicial system has been hijacked by ambitious opportunists. There has never been a more critical time in our country for the need to protect people in protected classes and enforce our laws.

My Experience with Judge Lippman:

I personally am a disabled woman who has Multiple Sclerorsis. For the last 13 years I have been involved in a litigation against an employer (WPP's Bates Advertising/AC&R which is no longer operating in the US) who discriminated against me when I was an Executive Vice President on the basis of my perceived disability. I was routinely referred to as "a cripple", excluded and isolated, subjected to intimidation and threats about my need to deploy a cane to ambulate, and eventually terminated. I filed a lawsuit in 1996. WPP did not want to settle despite knowing that members of management had admitted to knowing about the discrimination and failed to take any remedial action. We tried the case in April 2005 and I predictably won after an 11 day jury trial. My adversaries, represented by Drinker Biddle, who cheated and obstructed my discovery, hand picked the jury and agreed to the jury instructions or the "law of the case". Their deceptions resulted in a 60% reduction of the damages that would have made me whole. The jury wanted to award me the full amount but the discovery deceptions and other frauds precluded this. Despite the fact that WPP secured this reduction, they decided to appeal the case. Given the fact that the jury instructions were agreed to, their application should have been rejected as frivolous by the First Department Appellate Division. Instead, the panel of five white males, including Judge Lippman, decided to reverse the jury verdict, allegedly because the case "failed as a matter of law", and instead re-wrote the laws on discrimination in their Decision. In their decision, the panel was more concerned that I had made "baseless allegations" against a Jurist that was up for appointment to the First Department (Honorable Rolando Acosta, the trial judge on my case, was nominated by Elliot Spitzer to the First Department during the period I made my complaint), then they were about the fact that there was hard evidence of discrimination by the employer. The details of that decision can be found at the following link:

Why the Jordan v. Bates case was important:

This decision effectively changed the law on proving pretext in discrimination cases. By deploying the diversion of the dispute with the trial judge, and several inaccurate and outmoded beliefs about the disabled, Judge Lippman and his panel cloaked their scheme to re-legislate the laws on proving discrimination under ostensible outrage about a fellow jurist being criticized. According to the afore-cited Lippman decision, all an employer has to do now to dispose of an allegation of discrimination (and this would affect ALL classes under Title VII, ADA et al) is to proffer, but not prove, that they had a "legitimate reason" for the termination of the person in the protected class. In my case, *Kathryn Jordan v. Bates Advertising* , the "legitimate reason" my employer proffered was that "financial problems" that were attendant with a merger and led to layoffs in mid 1994 of "non client face" employees, and that it was more "cost effective" to fire a disabled manager and replace them with "several" non disabled managers. There were several problems with this "theory" that Drinker Biddle concocted and Lippman adopted:

Further, they adopted verbatim the flawed and fictional facts that my adversary deployed, including paraphrased testimony and "blame the victim" interpretations of the facts, to justify their decision. (There was also incredible gender bias in the intimations about my veracity and integrity). *Most egregiously they substituted their own opinions about the evidence for the jury's with the clear objective of enabling the employer's blatant violations of the ADA.* Their entire legal argument hung on the omission of a single piece of evidence, the documentation of my replacement's compensation, from the record, while disregarding not only all of my sworn testimony but the corroborating testimony that members of management attested to which indisputably proved the employer was motivated by discrimination and that this was the "real reason" for the termination.

We took this argument to the New York Court of Appeals after Judge Lippman issued his Opinion, but the NYCOA was busy with the Bianca Jagger eviction case that week. They declined to hear the most important discrimination case in the history of this state in decades. The legal standard for proving pretext in discrimination cases is not a minor issue. We proved that courts outside New York were aligning around the "real reason" standard, not the "legitimate reason" standard. There can be only one reason why NYCOA would decline to hear a case that would affect the lives of millions of New Yorkers, and change the laws on discrimination forever. They knew the case was fixed and they knew it was a power play by Judge Lippman of the First Department. But NYCOA did not rise to the challenge. They looked the other way, knowing the case was fixed.

Governor, please do not appoint Judge Lippman as Chief Jurist for the New York Court of Appeals. Judge Lippman will destroy the human rights agenda in this state. He will signal to every employer with a "wink" that EEO policies are wallpaper, nothing else. While we appreciate that the appointment must be a balanced one, we do not believe that Judge Lippman is a balanced jurist. We admire his intellectual prowess but it is unfortunately deployed under an insidious and subversive agenda.

Finally, we provide some important links below, as well as my personal email address for expeditious communication. We will publicly oppose this appointment if it is effected.

Sincerely,

Kathryn Grace Jordan
PRESIDENT AND FOUNDER

A-1
INVESTIGATIVE AGENCY, INC.

AGENCY LIC. #A9200017

POLYGRAPH EXAMINATION REPORT

TO: KATHRYN JORDAN

FROM: A-1 INVESTIGATIVE AGENCY, INC
POLYGRAPH DIVISION

DATE: DECEMBER 08, 2006

Polygraph Examination of: **KATHRYN JORDAN**

Date of Polygraph: DECEMBER 08, 2006

Type of Examination: **PERSONAL**

POLYGRAPH EXAMINATION RESULTS:

__X__ NO SIGNIFICANT DECEPTION REVEALED
____ DECEPTION REVEALED AND RESOLVED
____ DECEPTION REVEALED AND NOT RESOLVED
__X__ EXAMINEE MADE THE FOLLOWING PRE-TEST ADMISSIONS
____ EXAMINEE MADE THE FOLLOWING POST-TEST ADMISSIONS
____ TEST INCONCLUSIVE
____ INTERVIEW ONLY
____ EXAMINEE NOT FIT FOR TESTING

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