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COURT OF APPEALS

STATE OF NEW YORK

MATTER OF RAGHUBIR K. GUPTA,

Appellant,

-against-

No. 37

GRIEVANCE COMMITTEE FOR THE
SECOND, ELEVENTH, AND THIRTEENTH
JUDICIAL DISTRICTS,

Respondent.

20 Eagle Street
Albany, New York 12207
February 12, 2014

Before:

CHIEF JUDGE JONATHAN LIPPMAN
ASSOCIATE JUDGE VICTORIA A. GRAFFEO
ASSOCIATE JUDGE SUSAN PHILLIPS READ
ASSOCIATE JUDGE ROBERT S. SMITH
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE SHEILA ABDUS-SALAAM

Appearances:

RAGHUBIR K. GUPTA, PRO SE
Attorneys for Appellant
Brooklyn, NY 10017

MARK F. DEWAN, ESQ.
STATE OF NEW YORK GRIEVANCE COMMITTEE FOR THE
SECOND, ELEVENTH AND THIRTEENTH JUDICIAL DISTRICTS
Attorneys for Respondent
Renaissance Plaza
335 Adams Street
Suite 2400
Brooklyn, NY 11201

Sharona Shapiro
Official Court Transcriber

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CHIEF JUDGE LIPPMAN: 37, Matter of Gupta.

Would you like rebuttal time, counselor?

MR. GUPTA: Yes, Your Honor, three minutes.

CHIEF JUDGE LIPPMAN: Three minutes, sure.

What's the status of this case now, counselor?

MR. GUPTA: The suspension is stopped by this court.

CHIEF JUDGE LIPPMAN: The suspension is what?

MR. GUPTA: It was stopped by this court, and I think they are doing disciplinary proceedings. They start - - -

CHIEF JUDGE LIPPMAN: The disciplinary proceedings are pending now?

MR. GUPTA: They are - - - they were pending, then because there were no specifics, they were dismissed. Now they are starting again.

JUDGE SMITH: And we said in our stay order that it was without prejudice to their application for an interim stay. I take it they did not make that application?

MR. GUPTA: I guess not. They did not ask for any suspension in the new proceedings.

CHIEF JUDGE LIPPMAN: But they could now,

1 right?

2 MR. GUPTA: They could; they did not.

3 CHIEF JUDGE LIPPMAN: So what's the - - -

4 JUDGE GRAFFEO: What are you claiming - - -

5 CHIEF JUDGE LIPPMAN: Yeah.

6 JUDGE GRAFFEO: - - - that they should have
7 done?

8 MR. GUPTA: If they had the circumstances
9 or some act of misconduct based upon uncontroverted
10 evidence which shows there's an immediate threat to
11 the public or the clients, they could have done that.

12 JUDGE GRAFFEO: And how do they show that?
13 Are you saying they should have given you notice and
14 a hearing, or do they just enter some kind of a
15 decision that has a finding that there's a threat to
16 public safety?

17 MR. GUPTA: Well, after they vacated my
18 disbarment, they suspended me right away. At that
19 time, they should have done some finding of
20 misconduct based upon some evidence which could
21 endanger the public or the clients.

22 CHIEF JUDGE LIPPMAN: What do you want us
23 to do now?

24 MR. GUPTA: Say that again.

25 CHIEF JUDGE LIPPMAN: What do you want us

1 to do now?

2 MR. GUPTA: Well, my suspension should be
3 stopped until they are done with their disciplinary
4 proceedings. And they still have the right - - -

5 CHIEF JUDGE LIPPMAN: They can't suspend
6 you until after - - - after they're finished with the
7 disciplinary proceeding?

8 MR. GUPTA: Unless they have some proof
9 right now. When I filed my motion to reinstatement,
10 the Grievance Committee did not oppose it. They had
11 nothing to oppose. And the - - -

12 JUDGE SMITH: Suppose they go - - - suppose
13 they go to the Appellate Division now and they say,
14 judge, here's all the evidence that the government
15 presented in the criminal trial against Mr. Gupta;
16 look at that evidence and suspend him. Can they do
17 that?

18 MR. GUPTA: Yes, they can do that, but it
19 should be supported by the uncontro - - -
20 uncontroverted evidence for which this court can see
21 if they're following the rules - - -

22 JUDGE SMITH: So you say that under our - -
23 - we did say uncontroverted evidence. So you say if
24 they come in with a stack of evidence this high, and
25 you say I deny everything in there, then they can't

1 suspend you?

2 MR. GUPTA: Well, then I will have a chance
3 to respond.

4 JUDGE SMITH: Yes, but - - -

5 MR. GUPTA: Now in this case - - -

6 JUDGE SMITH: - - - so you get a chance to
7 resp - - - I see; they can't suspend you without a
8 hearing is what you're saying.

9 MR. GUPTA: Without notice and without
10 hearing.

11 CHIEF JUDGE LIPPMAN: Yeah, but now you're
12 on - - - now you're on notice, right?

13 MR. GUPTA: Again?

14 CHIEF JUDGE LIPPMAN: Are you on notice
15 now, since the disciplinary proceeding - - -

16 MR. GUPTA: Now I am, yes.

17 CHIEF JUDGE LIPPMAN: So what's the
18 controversy now? You're on notice.

19 MR. GUPTA: Well, it's only a temporary
20 stay order, so you have to - - -

21 JUDGE SMITH: If you - - -

22 MR. GUPTA: - - - make it - - -

23 JUDGE SMITH: If we affirm here - - -

24 MR. GUPTA: Yes.

25 JUDGE SMITH: - - - then we're affirming an

1 order that was entered against you without notice,
2 right?

3 MR. GUPTA: Yes.

4 JUDGE SMITH: Okay. I mean, I don't - - -

5 CHIEF JUDGE LIPPMAN: But if you reverse,
6 they could proceed with their interim suspension,
7 right?

8 MR. GUPTA: Well, yes, they have the - - -
9 in fact, the Grievance Committee has the power to do
10 that, bring the facts to the notice of the Appellate
11 Division, and then they can make their judgment, any
12 misconduct, any circumstances, any danger to the
13 public or clients. It was totally silent. Nothing
14 was done.

15 JUDGE GRAFFEO: So - - -

16 MR. GUPTA: And - - -

17 JUDGE GRAFFEO: So your main objection is
18 that you didn't have an opportunity to make your case
19 to the Appellate Division? Is that - - - or make
20 your case to the Grievance Committee? Is that - - -

21 MR. GUPTA: Two - - -

22 JUDGE GRAFFEO: - - - essentially your
23 complaint?

24 MR. GUPTA: I have two objections. I did
25 not get any notice, and I did not get a chance to

1 respond. It was - - -

2 JUDGE GRAFFEO: Respond to the Grievance
3 Committee?

4 MR. GUPTA: In case they brought some
5 charges against me or some act of misconduct.

6 JUDGE PIGOTT: You had - - - you had no
7 reason to expect, once you made your motion to be
8 readmitted - - - because the only reason you'd been
9 disbarred was an automatic disbarment on - - - on a
10 felony - - - that - - - that you would be readmitted.
11 And nobody opposed you.

12 MR. GUPTA: Yes.

13 JUDGE PIGOTT: Everyone said it's fine with
14 us - - -

15 MR. GUPTA: Yes.

16 JUDGE PIGOTT: - - - we don't care; admit
17 him. And then for some reason they - - - they did
18 not do it.

19 MR. GUPTA: They did not do it. And the
20 other thing I - - - I want to make an observation.
21 Once the Grievance Committee took a stand, okay, we
22 are not opposing it, they should have a right to make
23 their own judgment. Now, the Appellate Division is
24 apprising them to start the proceedings, give the
25 notice in sixty days, twenty days' notice that

1 they're appointing a referee. They're kind of
2 forcing them to do it, directing them to do it. I
3 mean, Grievance Committee should have its own
4 judgment. And now that's why the proceedings have
5 started, because the Appellate Division is telling
6 them to do it.

7 JUDGE PIGOTT: Are you looking for a change
8 of venue too?

9 MR. GUPTA: No.

10 JUDGE PIGOTT: I'll go to another Appellate
11 Division and have them take a look at it?

12 MR. GUPTA: Well, I don't know - - - no, we
13 are not - - -

14 JUDGE PIGOTT: It's not in your brief.

15 JUDGE SMITH: You wouldn't object, I
16 suppose.

17 MR. GUPTA: But what I'm saying is - - -

18 JUDGE GRAFFEO: Well, the Barash case does
19 say that the attorney there was entitled either to
20 prompt reinstatement on his application or to the
21 institution of proceedings to preclude him from
22 reinstatement on the basis of the charges and proof
23 sufficient to disbar him. So it sounds to me as if
24 in Barash the Appellate Division has that authority
25 to tell the committee to institute a proceeding.

1 MR. GUPTA: Yes, but he should be guilty of
2 professional misconduct immediately threatening the
3 public interest. So there should be a finding - - -
4 some kind of finding - - -

5 JUDGE GRAFFEO: So you have to have the
6 hearing - - -

7 MR. GUPTA: - - - by the Appellate
8 Division.

9 JUDGE GRAFFEO: You have to have the
10 hearing to make the finding.

11 MR. GUPTA: Well, this - - - this I think
12 they're referring in case they don't want to vacate
13 the disbarment. They can keep you disbarred. Then
14 they can start proceedings to preclude you from
15 reinstating.

16 CHIEF JUDGE LIPPMAN: Well, what I don't
17 understand here - - - assume we agree with you, you
18 needed notice; you have notice now.

19 MR. GUPTA: Right.

20 CHIEF JUDGE LIPPMAN: Why don't we just
21 have the - - - the - - - let them proceed with an
22 interim suspension and, like you say, let - - - let
23 the chips fall where they may.

24 MR. GUPTA: Only notice is not enough.
25 Once they give me notice, I should have a chance to

1 respond, and there should be some finding.

2 JUDGE SMITH: And by - - -

3 MR. GUPTA: Then they can suspend me.

4 JUDGE SMITH: - - - and by a chance to
5 respond, do you mean an evidentiary hearing with
6 witnesses?

7 MR. GUPTA: Yes, whatever they want to
8 proceed - - -

9 JUDGE SMITH: So you're saying that even if
10 they had given you notice or even if they give you
11 notice now, they can't suspend you pending a hearing?
12 They have to have the hearing first and then suspend
13 you?

14 MR. GUPTA: Unless they have some proof of
15 misconduct already which they have considered. They
16 didn't consider my misconduct in the criminal
17 charges. They didn't say anything about it.

18 CHIEF JUDGE LIPPMAN: Okay, counselor.
19 Let's hear from your adversary, and then you'll have
20 your rebuttal.

21 MR. GUPTA: Thank you.

22 MR. DEWAN: May it please the court. My
23 name is Mark DeWan. I'm here with chief counsel - -
24 -

25 CHIEF JUDGE LIPPMAN: Counselor - - -

1 MR. DEWAN: - - - Diana Kearse.

2 CHIEF JUDGE LIPPMAN: - - - you don't deny
3 he's entitled to notice, do you?

4 MR. DEWAN: Well, it's my position that by
5 applying for reinstatement, he was on notice that the
6 Appellate Division could - - - could apply Judiciary
7 Law Section 90, which allowed the court - - - the
8 Appellate Division to vacate or modify - - -

9 CHIEF JUDGE LIPPMAN: You don't want to
10 give him a hearing now?

11 MR. DEWAN: Well, he's going to get a
12 hearing, Your Honor. The disciplinary proceeding - -
13 -

14 CHIEF JUDGE LIPPMAN: Well, what are we
15 here for? He's on notice now. He knows.

16 MR. DEWAN: Yes.

17 CHIEF JUDGE LIPPMAN: You want to proceed
18 with interim suspension.

19 MR. DEWAN: Yes.

20 CHIEF JUDGE LIPPMAN: So - - - so what - -
21 - what do you want us to do?

22 MR. DEWAN: I'm looking for this court to
23 affirm the Appellate Division's decision because - -
24 -

25 JUDGE SMITH: And if we do that - - -

1 MR. DEWAN: Yes.

2 JUDGE SMITH: - - - then you don't have to
3 do anything; you can sit back and - - - and - - -
4 except - - - except under the Appellate Division's
5 decision, you have to begin a proceeding but you can
6 begin it in your own good time.

7 MR. DEWAN: Well, our good time has been
8 satisfied. We've already served a petition on Mr.
9 Gupta. And as he indicated, he made a motion to
10 strike it.

11 CHIEF JUDGE LIPPMAN: So if we reverse and
12 say you can proceed with your interim suspension, how
13 do we hurt you - - -

14 MR. DEWAN: Well, it's - - -

15 CHIEF JUDGE LIPPMAN: - - - or your
16 position or - - -

17 MR. DEWAN: Basically, it's my position
18 that the - - - that the Appellate Division was
19 correct in applying the Judiciary Law here.

20 JUDGE SMITH: No, but the question is how
21 do we hurt you?

22 MR. DEWAN: My concern is - - - is how the
23 - - - what the Appellate Division actually did in
24 issuing this order, and I - - - it - - - I believe
25 that it was correct in what it did.

1 JUDGE PIGOTT: One thing the court - - -

2 JUDGE SMITH: You're saying we don't hurt
3 you; it's a matter of principle?

4 MR. DEWAN: Well, our disciplinary
5 proceeding is - - - is going forward, one way or the
6 other. We're - - -

7 JUDGE SMITH: Why didn't - - - why didn't
8 you apply for the interim stay that we invited you to
9 apply for?

10 MR. DEWAN: Because at this point - - - at
11 that point, there wasn't a basis for it. Under the
12 typical scenario, Your Honor, the - - - the rule that
13 governs interim suspensions is intended to - - - to
14 give notice to attorneys who are under investigation
15 where there is either the - - -

16 JUDGE SMITH: Why couldn't you - - - why
17 couldn't you, the day after we issued our stay, go to
18 the Appellate Division and say here's - - - here's -
19 - - well, whether you can rely on the conviction or
20 not, let's not argue about, here's a stack of
21 evidence this high that suggests that this man
22 shouldn't be practicing law; suspend him pending a
23 hearing.

24 MR. DEWAN: The - - - the facts didn't
25 warrant that kind of application at the time, Your

1 Honor. What - - -

2 JUDGE SMITH: You mean you didn't - - -
3 you're saying - - - you're saying the facts didn't
4 warrant an interim suspension? Then why - - -

5 MR. DEWAN: There weren't - - -

6 JUDGE SMITH: - - - why should he be
7 suspended?

8 MR. DEWAN: He was suspended because, as I
9 said, the - - - the Judiciary Law fully supports what
10 the Appellate Division did, which is - - -

11 JUDGE PIGOTT: We need your help. I'm
12 looking at it from the Fourth Department, where I - -
13 -

14 MR. DEWAN: Of course.

15 JUDGE PIGOTT: - - - where I used to sit.
16 And you count on the Grievance Committee to bring to
17 - - - to the attention of the court those factors by
18 which they're going to do something. When there's a
19 reversal, they can be for any number of reasons; this
20 one happened to be a closed courtroom, if I remember
21 right.

22 MR. DEWAN: Yes.

23 JUDGE PIGOTT: There could be issues that
24 would totally eviscerate any claim of attorney
25 misconduct, and therefore, if somebody makes an

1 application and wants to be reinstated, we should say
2 yes. You know, it's - - - you win, it's over. But
3 the Grievance Committee are the ones that come out -
4 - - come in and say, as Judge Smith is suggesting,
5 wait a minute, there's - - - there's more to this
6 than simply the indictment, and this is what it is,
7 and we would ask for an interim suspension. And then
8 they would have a full record in front of them before
9 they make that. For them to just shoot from the hip
10 can cause trouble.

11 MR. DEWAN: Well, under circumstances such
12 as this, where an attorney makes an application for
13 reinstatement, typically, the Grievance Committee
14 does not take a position, because it's - - - it's our
15 belief that it's - - - it's solely within the
16 discretion of the Appellate Division.

17 JUDGE PIGOTT: Why don't you - - - I mean,
18 I don't understand that. I mean, we're - - - we're
19 five judges - - - you are too, on these things - - -
20 and we don't know anything. We get - - - we get a -
21 - - a letter from somebody saying here's my - - -
22 here's my - - - my reversal of the Second Circuit; I
23 want to be reinstated. And I would think that
24 everybody would say anybody got a problem with that,
25 and they'd say no, and he'd be reinstated, and you'd

1 say wait a minute, wait a minute.

2 MR. DEWAN: Well, what the - - - what the
3 court knew was that Mr. Gupta had been convicted of
4 immigration fraud, had been - - - had been sentenced
5 to fifty-one months' imprisonment. And although the
6 - - - the conviction was reversed, it was reversed on
7 technical grounds.

8 JUDGE SMITH: But if you thought that was a
9 good reason not to reinstate him, why didn't you tell
10 the Appellate Division that?

11 MR. DEWAN: At the time that he made the
12 application, Your Honor, it was - - - it - - - as I
13 said, it is our practice not to - - -

14 JUDGE SMITH: Well, I mean, I think Judge
15 Pigott and I are both questioning whether that
16 practice makes any sense. If you - - - if you - - -
17 I mean, yes, sure, it's solely within the discretion
18 of the Appellate Division, but that's what lawyers
19 are for is to tell judges how they think they should
20 exercise their discretion. Why - - - if, yeah - - -
21 why are you unwilling to express an opinion to the
22 Appellate Division on whether it's a good idea or a
23 bad idea to let this man practice law for the moment?

24 MR. DEWAN: It certainly is - - - is - - -
25 at this point what - - - what the Appellate - - -

1 what the Appellate Division had in front of us was,
2 in my view, enough to - - - to render the decision
3 that it did.

4 JUDGE SMITH: Why didn't - - - why didn't
5 you tell them that?

6 MR. DEWAN: I think Mr. Gupta is making
7 more out of - - -

8 JUDGE SMITH: And indeed, is the question
9 really whether it's enough or whether it's - - -
10 whether - - - whether they should indeed exercise
11 their discretion as they did. And why - - - you
12 know, what's the Grievance Committee for if it
13 doesn't take a position on a question like that?

14 MR. DEWAN: Well, the Grievance Committee
15 is there to investigate attorneys who are licensed to
16 practice law, and if there are allegations of
17 misconduct, we investigate them. And if - - -

18 JUDGE SMITH: Well, I - - - I didn't mean
19 to suggest you had nothing else to do.

20 MR. DEWAN: No.

21 JUDGE SMITH: I wasn't trying to reflect on
22 the Grievance Committee - - -

23 MR. DEWAN: No.

24 JUDGE SMITH: - - - but isn't it part of
25 your job to act as an advocate when you think that a

1 that in every case? I mean, in other words, wouldn't
2 they feel - - - speaking of the - - - of the court -
3 - - feel more comfortable, before they make a
4 decision as to someone, to know that you have a
5 position? And if you have no position, that would
6 mean no opposition, and therefore they ought to find
7 in favor of the applicant.

8 MR. DEWAN: You know, Your Honor, it - - -
9 as I said, it has - - - has been our practice.

10 JUDGE GRAFFEO: Do you know if that's the
11 practice of the other three - - -

12 MR. DEWAN: I don't know, Your Honor.

13 JUDGE GRAFFEO: - - - Appellate Divisions?

14 MR. DEWAN: I don't know, Your Honor.

15 JUDGE ABDUS-SALAAM: Wouldn't it be a
16 better practice for the Appellate Division to remand
17 to the Grievance Committee for a hearing, which is
18 what I think we did mostly in the First Department?
19 We would send it to the Grievance Committee to
20 conduct a hearing on whether this person should be
21 suspended or not.

22 MR. DEWAN: Well, Your Honor, it gets back
23 to the - - - to the - - -

24 JUDGE ABDUS-SALAAM: Discretion.

25 MR. DEWAN: Yes, but also to the purpose of

1 Judiciary Law Section 90, subdivision 5(a), which is
2 the - - - the power to vacate or modify. And - - -
3 and I can only emphasize strongly enough that what
4 the court did here was to modify that disbarment and
5 - - - and suspend Mr. Gupta because, in ordering a
6 disciplinary proceeding, the Appellate Division can't
7 order a disciplinary proceeding against a disbarred
8 lawyer. It - - -

9 JUDGE SMITH: Well, suppose they had just
10 denied the application, despite the absence of
11 opposition from you, and he - - - and he takes an
12 appeal to this court, how do we know whether to
13 reverse or affirm?

14 MR. DEWAN: If - - - if the Appellate
15 Division just outrightly denied the application, then
16 he certainly would have had an argument that - - -
17 that the Appellate Division may have acted
18 incorrectly. But here - - -

19 JUDGE SMITH: Why was it - - - why should
20 they not - - - until the day the Appellate Division
21 decided this, this was an uncontested proceeding, as
22 far as Mr. Gupta knew. Why should they not have
23 issued an order to show cause or written a letter or
24 something saying we are considering doing this; we
25 invite your comments on whether we should do it or

1 not?

2 MR. DEWAN: I believe that - - -

3 JUDGE SMITH: What would be wrong with
4 that?

5 MR. DEWAN: Well, I believe that his
6 application for reinstatement served that purpose,
7 saying that I am - - - I am applying, pursuant to the
8 Judiciary Law, and - - - and I know that the court
9 could vacate my disbarment or - - -

10 JUDGE SMITH: You mean he really - - -

11 MR. DEWAN: - - - and - - - or modify.

12 JUDGE SMITH: He really - - - he really
13 said everything he could have said, or he had a fair
14 opportunity to say everything he could possibly say
15 as to why he shouldn't be - - - why he shouldn't be
16 subject to an interim suspension?

17 MR. DEWAN: Clearly, he could have said
18 more, under those circumstances, but - - - but it's
19 the - - -

20 JUDGE SMITH: I mean, I guess you didn't
21 quite answer my - - - I mean, wouldn't it have been a
22 better procedure for them to alert the lawyer in this
23 case that they are - - - that despite the absence of
24 opposition, they are not persuaded that they should
25 just grant the application and they'd like to hear

1 from him on what they should do?

2 MR. DEWAN: Well, I - - - I believe by
3 ordering a prompt disciplinary proceeding - - -

4 JUDGE SMITH: Well, no, I - - - my question
5 is wouldn't that have been a better way to do it?

6 MR. DEWAN: Perhaps, Your Honor. I'm - - -
7 I'm - - - I - - - I can only return to the order
8 itself, which - - - which it's my position that they
9 - - - they - - - that the Appellate Division acted in
10 compliance with the spirit of this court's decision -
11 - -

12 CHIEF JUDGE LIPPMAN: Okay.

13 MR. DEWAN: - - - in Barash.

14 CHIEF JUDGE LIPPMAN: Thanks, counselor.

15 MR. DEWAN: You're welcome. Thank you.

16 CHIEF JUDGE LIPPMAN: Counselor, rebuttal?

17 MR. GUPTA: Just one case, Matter of
18 Chesler, '79 by Appellate Division. It's exactly my
19 facts. Attorney's conviction was reversed and a new
20 trial granted. The Appellate Division determined
21 that when no charge of misconduct had been filed by
22 the office of the Grievance Committee and the court
23 received no complaint of misconduct against the
24 petitioner during the period of his disbarment, then
25 he was entitled to readmission to the bar.

1 JUDGE SMITH: What's the name of that case?

2 MR. GUPTA: Matter of Chesler, 70 - - -

3 JUDGE SMITH: Jasper (sic)?

4 MR. GUPTA: C-H-E-S-L-E-R, 70. It's in our
5 reply brief also - - -

6 JUDGE SMITH: Okay.

7 MR. GUPTA: - - - A.D.2d 141 (1979).

8 CHIEF JUDGE LIPPMAN: Alright, counselor,
9 one more time. You want us to reverse, and what
10 happens?

11 MR. GUPTA: I want my suspension to be
12 stayed - - -

13 CHIEF JUDGE LIPPMAN: You want it to be
14 stayed until when?

15 MR. GUPTA: Until they do something. I
16 don't know. They have to come out with a - - -

17 CHIEF JUDGE LIPPMAN: So you want - - -

18 MR. GUPTA: - - - misconduct against me.

19 CHIEF JUDGE LIPPMAN: You want us to
20 reverse, you want us to direct a hearing, you want
21 them to be a hearing? You want us to reverse and
22 stay any further proceedings until after a hearing;
23 is that what you want? Any further suspension, is
24 that your - - - the relief that you're seeking?

25 MR. GUPTA: Yes, Your Honor.

1 CHIEF JUDGE LIPPMAN: Okay. Any other
2 questions?

3 Okay, counselor. Thank you both.

4 (Court is adjourned)

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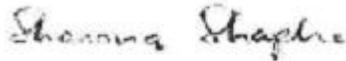
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C E R T I F I C A T I O N

I, Sharona Shapiro, certify that the foregoing transcript of proceedings in the Court of Appeals of Matter of Gupta v. Grievance Committee for the Second, Eleventh, and Thirteenth Judicial Districts, No. 37 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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