

STATE OF NEW YORK  
COMMISSION ON JUDICIAL CONDUCT

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In the Matter of the Proceeding Pursuant to Section 44,  
subdivision 4, of the Judiciary Law in Relation to

JOHN N. MULLIN,

**DETERMINATION**

a Judge of the District Court and an Acting Judge  
of the County Court, Suffolk County.

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THE COMMISSION:

Honorable Eugene W. Salisbury, Chairman  
Henry T. Berger, Esq.  
Jeremy Ann Brown, C.A.S.A.C.  
Stephen R. Coffey, Esq.  
Lawrence S. Goldman, Esq.  
Christina Hernandez, M.S.W.  
Honorable Daniel F. Luciano  
Honorable Frederick M. Marshall  
Honorable Karen K. Peters  
Alan J. Pope, Esq.  
Honorable Terry Jane Ruderman

APPEARANCES:

Gerald Stern (Alan W. Friedberg, Of Counsel) for the Commission

David W. Clayton for Respondent

The respondent, John N. Mullin, a judge of the District Court and an acting  
judge of the County Court, Suffolk County, was served with a Formal Written Complaint  
dated May 15, 2000, alleging that respondent engaged in improper political activity

during his campaign for election as a Supreme Court justice in 1998.

On July 13, 2000, 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 admonished and waiving further submissions and oral argument.

On August 10, 2000, the Commission approved the agreed statement and made the following determination.

As to Charges I and II of the Formal Written Complaint:

1. Respondent has been a judge of the District Court since 1984. In 1998, respondent was a candidate for election to Supreme Court.

2. During his 1998 campaign, respondent approved and failed to prevent widespread distribution of a piece of campaign literature and advertisements that implied that respondent was an incumbent Supreme Court justice by containing the statement "John N. Mullin Supreme Court Justice," together with a photograph of respondent in judicial robes.

3. In October 1998, during his campaign for Supreme Court, respondent failed to prevent widespread distribution of an advertisement, placed in the Long Island Catholic newspaper by respondent's campaign, that implied that respondent

was an incumbent Supreme Court justice by containing the statements “John N. Mullin Supreme Court Justice – Rows B & F” and “Paid for by the Committee to Re-Elect Judge John Mullin.” Respondent’s campaign committee was named “The Committee to Elect John N. Mullin to the Supreme Court.”

4. The October 1998 advertisement in the Long Island Catholic also contained the statements “John N. Mullin Supreme Court Justice – Rows B & F The Authentic Right To Life Judicial Candidate,” “Life...The Verdict For All Of God’s Children” and “Judge Mullin Needs And Deserves The Support Of All Who Cherish Life.” These statements appeared to commit respondent on abortion-related issues that come before the Court.

5. Respondent tacitly approved the language contained in the Long Island Catholic advertisement by giving his campaign manager, Jerry Garguilo, Esq., authority to compose the text of the advertisement and by having a general discussion with Mr. Garguilo concerning the contents of the advertisement.

As to Charges III and IV of the Formal Written Complaint:

6. On August 18, 1998, at respondent’s direction, respondent’s campaign for Supreme Court justice made a payment of \$1,750.00 to the Smithtown Republican Victory Fund to purchase ten tickets to the Annual Smithtown Republican Cocktail Reception and Buffet, which constituted an improper political contribution.

7. At the time of the purchase of the ten tickets, respondent knew or should have known that Section 100.5(A)(2)(v) of the Rules Governing Judicial Conduct permits a judicial candidate to purchase only two tickets to politically sponsored dinners and other functions.

8. On August 26, 1998, at respondent's direction, respondent's campaign for Supreme Court justice made a payment of \$1,000.00 to the Suffolk County Right To Life Party, which constituted an improper campaign contribution. At the time of the payment, respondent had not yet been designated as the candidate of the Right To Life Party, although respondent had been the Party's candidate in three previous judicial elections.

9. In the spring of 2000, during the Commission's investigation of this matter, respondent obtained from the Smithtown Republican Victory Fund and the Suffolk County Right To Life Party the return of the funds improperly paid to those groups by respondent's campaign committee and arranged to return the funds pro rata to the campaign's contributors.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2, 100.5(A), 100.5(A)(2)(v), 100.5(A)(4)(a), 100.5(A)(4)(d)(i), 100.5(A)(4)(d)(ii) and 100.5(A)(4)(d)(iii) of the Rules Governing Judicial Conduct. Charges I, II, III and IV of the Formal Written Complaint

are sustained, and respondent's misconduct is established.

Respondent's conduct during his 1998 campaign for Supreme Court justice reveals a lack of sensitivity to the ethical standards governing judges. As a judge since 1984, respondent should have been aware of the restrictions on political activity for judicial candidates.

By containing the statement "John N. Mullin Supreme Court Justice," together with a photograph of respondent in judicial robes, respondent's campaign literature and advertisements, which respondent had approved, conveyed the false impression that respondent was an incumbent Supreme Court justice. This impression was underscored by a reference, in one advertisement, to "The Committee to Re-Elect Judge John Mullin"; in fact, respondent's campaign committee was named "The Committee to Elect John N. Mullin to the Supreme Court." By appearing to portray him as an incumbent Supreme Court justice, respondent's misleading campaign material would be likely to give him an unfair advantage in his campaign for that office and violated Section 100.4(d)(iii) of the Rules Governing Judicial Conduct.

When seeking election for a higher judicial office, a judge may use the term "judge" or "justice" in campaign literature, but in doing so the judge must make clear that he or she is not the incumbent of the office sought (NYSBA Op 612, 28-89, Sept. 7, 1990; Opn Advisory Comm on Jud Ethics 94-50). A judge's campaign material must

scrupulously avoid any ambiguity in that regard in order to avoid the potential for deception. Respondent's campaign material fell short of the ethical standards.

Further, by describing respondent as "The Authentic Right To Life Judicial Candidate" and containing the statements "Life...The Verdict For All Of God's Children" and "Judge Mullin Needs And Deserves The Support Of All Who Cherish Life," respondent's campaign advertisement in the Long Island Catholic appeared to commit respondent on abortion-related issues that come before the Court. Although a judicial candidate may accept endorsement from the Right To Life Party, a candidate may not pledge support to a party platform or position or make statements that may reflect on his or her impartiality (Sections 100.4[d][i] and 100.4[d][ii] of the Rules Governing Judicial Conduct).

Respondent's conduct in authorizing his campaign committee to purchase ten tickets to a political dinner was improper since a judicial candidate may buy only two such tickets (Section 100.5[A][2][v] of the Rules Governing Judicial Conduct; Matter of Salman, 1995 Ann Rep of NY Commn on Jud Conduct, at 134 [Jan. 26, 1994]). This constituted an improper political contribution and violated the ethical rules.

Respondent also permitted his campaign committee to give \$1,000 to the Suffolk County Right To Life Party. While a judge's committee may reimburse political organizations for the proportionate share of the cost of the judge's election campaign, the judge should obtain documentation of actual costs before the political organization is

reimbursed (Opns Advisory Comm on Jud Ethics; Matter of Salman, supra). Although respondent had been the candidate of the Right To Life Party in previous elections, he had not yet been designated as the Party's candidate at the time of the payment, and thus his committee's payment clearly constituted an improper political contribution.

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

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

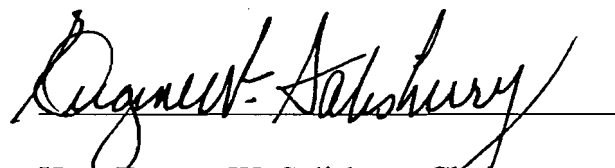
Judge Luciano did not participate.

Ms. Brown and Mr. Coffey and were not present.

#### CERTIFICATION

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

Dated: September 25, 2000

  
Hon. Eugene W. Salisbury, Chairman  
New York State  
Commission on Judicial Conduct