

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

## Determination

BARRY SALMAN,

a Justice of the Supreme Court,  
Bronx County.

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THE COMMISSION:

Henry T. Berger, Esq., Chair  
Honorable Myriam J. Altman\*  
Helaine M. Barnett, Esq.  
Herbert L. Bellamy, Sr.  
Honorable Carmen Beauchamp Ciparick\*  
E. Garrett Cleary, Esq.  
Dolores Del Bello  
Lawrence S. Goldman, Esq.  
Honorable Eugene W. Salisbury  
John J. Sheehy, Esq.  
Honorable William C. Thompson

APPEARANCES:

Gerald Stern (Robert H. Tembeckjian, Of Counsel) for  
the Commission

Damashek, Godosky & Gentile (By Richard Godosky) for  
Respondent

The respondent, Barry Salman, a justice of the Supreme Court, 12th Judicial District, was served with a Formal Written Complaint dated August 27, 1993, alleging that he engaged in improper political activity. Respondent filed an answer dated September 28, 1993.

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\*Judge Altman and Judge Ciparick resigned effective December 31, 1993. The vote in this matter was on December 9, 1993.

On December 1, 1993, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Judiciary Law §44(5), waiving the hearing provided by Judiciary Law §44(4), stipulating that the Commission make its determination based on the pleadings and the agreed upon facts and jointly recommending that respondent be censured.

Counsel submitted memoranda as to sanction. Oral argument was waived.

On December 9, 1993, the Commission approved the agreed statement and made the following determination.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a justice of the Supreme Court since May 1990. He was a candidate for Supreme Court in the November 1990 election and formed the Committee to Elect Justice Barry Salman to the Supreme Court. He won the election on November 6, 1990. Respondent was a judge of the Civil Court of the City of New York from 1978 to 1990.

2. On June 28, 1990, with respondent's knowledge and approval, the Committee to Elect Justice Barry Salman to the Supreme Court purchased eight tickets, at a total price of \$2,400, to the annual dinner of the Bronx County Democratic Committee.

As to Charge II of the Formal Written Complaint:

3. With his knowledge and approval, respondent's campaign committee made the following contributions to political organizations without receipts or other records demonstrating that the sums constituted reimbursement for actual expenses made on behalf of respondent's campaign:

a) \$5,000 to the Bronx Democratic Campaign Committee on October 15, 1990;

b) \$1,000 to the Bronx Republican Committee on September 26, 1990;

c) \$1,000 to the North Bronx Democratic Club on November 2, 1990; and,

d) \$750 to the Democrats for a Better Bronx on August 19, 1990.

4. Paragraph 6(E) of Charge II is not sustained and is, therefore, dismissed.

As to Charge III of the Formal Written Complaint:

5. On November 4, 1990, using funds of the campaign committee, respondent purchased a video camcorder and a cellular car telephone for purposes unrelated to the campaign.

6. The camcorder was used by members of his family to videotape respondent's induction ceremony in December 1990, then was kept by respondent at his home.

7. After the Commission staff inquired about the purchase of the camcorder, respondent transferred it to his attorney's office. He has agreed to donate it to the Unified Court System.

8. The cellular phone was registered in respondent's name at his home address. He paid the monthly bills with personal funds.

9. After the Commission staff inquired about the purchase of the cellular phone and after consulting with the staff of the State Board of Elections, respondent estimated the depreciated value of the phone at \$250 and donated that amount from his personal funds to a charity.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2, 100.7, 100.7(a)(2)(ii), 100.7(b), 100.7(c) and 100.7(e), and Canons 1, 2, 7A(1)(c), 7A(2) and 7B(2) of the Code of Judicial Conduct. Charges I, II and III of the Formal Written Complaint are sustained insofar as they are consistent with the findings herein, and respondent's misconduct is established.

It was highly improper for respondent to use campaign funds for his personal use. Campaign funds "shall not be converted by any person to a personal use which is unrelated to a political campaign or the holding of a public office or party

position." (Election Law §14-130). The use of the camcorder to tape his swearing-in ceremony does not excuse respondent's misconduct.

Respondent's purchase of eight tickets to a political dinner was improper since a judicial candidate may buy only two such tickets. (Rules Governing Judicial Conduct, 22 NYCRR 100.7[a][2][ii]; 1992 Opns Advisory Comm on Jud Ethics No. 92-97). This constituted improper political contributions, violated ethical rules (Rules Governing Judicial Conduct, 22 NYCRR 100.7 and Canon 7A[1][c] of the Code of Judicial Conduct) and did not comply with the law (Election Law §17-162).

Respondent also permitted his campaign committee to give a total of \$7,750 to four political organizations. A judge's committee may reimburse political organizations for the proportionate share of the cost of the judge's election campaign (Opns Advisory Comm on Jud Ethics, supra), but the judge should obtain documented evidence of actual costs before the political organization is reimbursed (1984 Ann Report of NY Commn on Jud Conduct, at 46). Since respondent did not do so, we conclude that his committee's payments constituted improper political contributions.

His argument that he was unaware of the limitations on his political activity does not provide an excuse for respondent's misconduct. A judge has a responsibility to learn about and obey ethical rules (Matter of Vonder Heide v State Commission on Judicial Conduct, 72 NY2d 658, 660), and a judge

who is a lawyer should be especially sensitive to ethical requirements (Matter of Bruhn, 1991 Ann Report of NY Commn on Jud Conduct, at 47, 49).

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

Mr. Berger, Judge Altman, Ms. Barnett, Mr. Bellamy, Judge Ciparick, Mrs. Del Bello, Mr. Goldman, Judge Salisbury and Judge Thompson concur.

Mr. Cleary and Mr. Sheehy were not present.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct, containing the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

Dated: January 26, 1994

Henry T. Berger  
Henry T. Berger, Esq. Chair  
New York State  
Commission on Judicial Conduct