

**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

**ARTHUR BIRNBAUM,**

a Judge of the Civil Court of the City of New York,  
New York County.

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**Determination**

**THE COMMISSION:**

Henry T. Berger, Esq., Chair  
Jeremy Ann Brown  
Stephen R. Coffey, Esq.  
Mary Ann Crotty  
Lawrence S. Goldman, Esq.  
Honorable Daniel F. Luciano  
Honorable Frederick M. Marshall  
Honorable Juanita Bing Newton  
Alan J. Pope, Esq.  
Honorable Eugene W. Salisbury  
Honorable William C. Thompson

**APPEARANCES:**

Gerald Stern for the Commission

Hoffinger Friedland Dobrish Bernfeld & Stern, P.C. (By Jack S. Hoffinger)  
for Respondent

The respondent, Arthur Birnbaum, a judge of the Civil Court of the City of  
New York, New York County, was served with a Formal Written Complaint dated June 5,  
1997, alleging improper campaign activity. Respondent did not answer the Formal Written  
Complaint.

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On June 23, 1997, 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 agreed upon facts, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On July 10, 1997, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a judge of the Civil Court of the City of New York since January 1, 1997.
2. Respondent, who was then serving as a housing judge in the Civil Court, was a candidate for Civil Court judge in the Democratic primary on September 10, 1996. He had one opponent.
3. Respondent's campaign spent only a small amount on paid advertising; mailings to potential voters constituted the most significant part of the campaign. About two weeks before the primary, respondent's campaign mailed a brochure to approximately 8,000 voters, all of whom had been identified as tenants.
4. The brochure asserted that voters had a "clear choice" between respondent, who was identified as a tenant, and his opponent, who was identified as a landlord. The brochure contained photographs and quotations that were favorable to respondent from tenants who had appeared before him in the Housing Part of the Civil Court, including tenants in a case that was pending before him at the time.

5. It was respondent's idea to refer in the brochure to litigants in his cases. He directed his campaign staff to prepare the brochure, and he approved it before it was mailed.

6. Respondent selected the tenants whose photographs and quotations appeared in the brochure, contacted them and asked them to participate and accompanied the photographer to the building where the tenants lived.

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, 100.5(A)(4)(a), 100.5(A)(4)(d)(i) and 100.5(A)(4)(d)(ii), and Canons 1, 2 and 7B(1) of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

The campaign activities of judicial candidates are significantly circumscribed. (See, Matter of Decker, 1995 Ann Report of NY Commn on Jud Conduct, at 111, 112). A judicial candidate must "maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary...." (Rules Governing Judicial Conduct, 22 NYCRR 100.5[A][4][a]). The candidate may not "make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office," (22 NYCRR 100.5[A][4][d][i]) and may not "make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court," (22 NYCRR 100.5[A][4][d][ii]).

Respondent's campaign literature gave the unmistakable impression that he would favor tenants over landlords in housing matters, which are often the subject of Civil Court proceedings. Respondent identified himself as a tenant and his opponent as a landlord. He selected, solicited and used testimonials from tenants speaking of his favorable handling of their cases, including quotations from tenants in a case that was pending before him at the time. In doing so, he compromised his impartiality and failed to maintain the dignity expected of a judicial officer.

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

Mr. Berger, Mr. Coffey, Ms. Crotty, Judge Luciano, Judge Marshall, Judge Newton, Mr. Pope, Judge Salisbury and Judge Thompson concur.

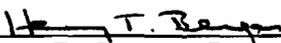
Mr. Goldman was not present.

Ms. Brown was not a member of the Commission when the vote was taken in this matter.

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: September 29, 1997

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