

**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

ESTHER F. HOLMES,

**Determination**

a Justice of the Bangor Town Court,  
Franklin County.

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THE COMMISSION:

Henry T. Berger, Esq., Chair  
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  
Barry C. Sample  
Honorable William C. Thompson

APPEARANCES:

Gerald Stern (Cathleen S. Cenci, Of Counsel) for the  
Commission

Alexander Lesyk and Donald J. Holland for Respondent

The respondent, Esther F. Holmes, a justice of the Bangor Town Court, Franklin County, was served with a Formal Written Complaint dated August 8, 1996, alleging that she issued a warrant of eviction without any notice to the tenant and without conducting any court proceeding. Respondent filed an answer dated August 20, 1996.

On March 4, 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 admonished and waiving further submissions and oral argument.

On March 27, 1997, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Bangor Town Court since 1978. She had been the court clerk for 20 years prior to becoming a judge.

2. On October 25, 1995, respondent issued a Warrant of Eviction, directing Denise Judware to vacate premises owned by Sally A. Roberts within two days. No Notice of Petition or Petition had been filed in respondent's court, and respondent had given no notice and no opportunity to be heard to Ms. Judware, as required by RPAPL 731 and 745.

3. Respondent issued the eviction warrant based solely upon the ex parte request of the landlord.

4. Respondent acknowledges that, with her experience as a judge and court clerk, she knew or should have known that to issue a Warrant of Eviction without affording due process to the tenant was improper.

5. After being served with the Warrant of Eviction, Ms. Judware contacted a Legal Aid attorney, who persuaded the sheriff not to proceed with the eviction.

6. Ms. Judware's attorney later wrote to respondent, requesting an opportunity to review respondent's file concerning the eviction. Respondent failed to respond to the inquiry and did not keep any record concerning the Warrant of Eviction or her action against Ms. Judware, as required by UJCA 107 and the Recordkeeping Requirements for Town and Village Courts, 22 NYCRR 200.23.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct then in effect, 22 NYCRR 100.1, 100.2(a), 100.3(a)(1)\* and 100.3(a)(4)\*\* , and Canons 1, 2A, 3A(1) and 3A(4) of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

After hearing only one party, respondent ordered a tenant evicted, even though no court proceeding had been commenced and the tenant had not been given notice or an opportunity to be heard. By depriving the tenant of a fundamental right in such a one-sided and summary fashion, respondent violated the law and compromised her impartiality and integrity. (See, Matter of Kristoffersen, 1991 Ann Report of NY Commn on Jud Conduct, at 66).

In mitigation, we have considered that this was an isolated incidence in a long career on the bench and that respondent has been cooperative and contrite in this proceeding.

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\* Now Section 100.3(B)(1)

\*\* Now Section 100.3(B)(6)

(See, Matter of Edwards v State Commission on Judicial Conduct, 67 NY2d 153, 155; Matter of Lindell-Cloud, 1996 Ann Report of NY Commn on Jud Conduct, at 91, 92).

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

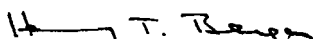
Mr. Berger, Mr. Coffey, Ms. Crotty, Mr. Goldman, Judge Newton, Mr. Pope, Judge Salisbury and Judge Thompson concur.

Judge Luciano, Judge Marshall and Mr. Sample 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: May 29, 1997

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