

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

DENNIS A. WARE,

## Determination

a Justice of the Mentz Town Court and an  
Acting Justice of the Port Byron Village  
Court, Cayuga 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 for the Commission  
Honorable Dennis A. Ware, pro se

The respondent, Dennis A. Ware, a justice of the Mentz Town Court and the Port Byron Village Court, Cayuga County, was served with a Formal Written Complaint dated June 8, 1990, alleging numerous administrative and adjudicative failures. Respondent answered the Formal Written Complaint by letter dated June 28, 1990.

On September 21, 1990, the administrator of the Commission and respondent entered into an agreed statement of facts pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for by Section 44, subdivision 4, of the Judiciary Law, stipulating that the Commission make its determination based on the pleadings and the agreed upon facts, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On September 27, 1990, 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 Mentz Town Court since 1980. He has been acting justice of the Port Byron Village Court since 1980. He has attended all of the required training sessions offered by the Office of Court Administration.

2. From March 28, 1983, to June 8, 1990, in violation of Section 1806-a of the Vehicle and Traffic Law, respondent failed to take any action to dispose of 228 motor vehicle cases pending in his court in which the defendants had failed to appear or answer the charges, as set forth in Exhibit 1 to the agreed statement of facts.

3. From March 28, 1983, to June 8, 1990, in violation of Section 514(3) of the Vehicle and Traffic Law, respondent failed to notify the Department of Motor Vehicles of the defendants' failure to appear in court or answer the charges in

225 of the motor vehicle cases pending in his court, as set forth in Exhibit 1 to the agreed statement of facts.

4. From March 28, 1983, to June 8, 1990, in violation of Sections 107, 2019 and 2019-a of the Uniform Justice Court Act, respondent failed to make docket entries for 228 motor vehicle cases pending in his court, as set forth in Exhibit 1 to the agreed statement of facts.

As to Charge II of the Formal Written Complaint:

5. From June 18, 1983, to June 8, 1990, in violation of Section 514(3) of the Vehicle and Traffic Law and Sections 107, 2019 and 2019-a of the Uniform Justice Court Act, respondent failed to notify the Department of Motor Vehicles of the defendants' failure to pay a total of \$7,385 in fines in 85 motor vehicle cases pending in his court, as set forth in Exhibit 2 to the agreed statement of facts.

As to Charge III of the Formal Written Complaint:

6. On December 4, 1987, William D. Phelps was charged with a violation of Section 1122(a) of the Vehicle and Traffic Law. On January 11, 1988, Mr. Phelps pled guilty in respondent's court to a violation of Section 1163(a) of the Vehicle and Traffic Law as part of a plea agreement. Respondent did not notify Mr. Phelps of the fine imposed until July 19, 1988, even though the defendant's attorney had requested notification at least twice during this period.

7. On July 27, 1988, Mr. Phelps sent respondent \$35 in payment of the fine. In violation of Section 214.9(a) of the Uniform Civil Rules for the Justice Courts, respondent delayed depositing the money until November 8, 1988, even though the defendant's attorney had asked him on September 13, 1988, to deposit the funds.

8. Respondent has failed to return Mr. Phelps' driver's license record of convictions which was submitted to him on July 27, 1988, even though the defendant's attorney requested that he return the record by letters dated September 13 and November 10, 1988.

9. Respondent failed to maintain a case file or correspondence in the Phelps case, in violation of Section 200.23 of the Uniform Rules for the Courts Exercising Criminal Jurisdiction.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(a), 100.3(a)(5) and 100.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A, 3A(5) and 3B(1) of the Code of Judicial Conduct. Charges I through III of the Formal Written Complaint are sustained insofar as they are consistent with the findings herein, and respondent's misconduct is established.

Over a period of seven years, respondent neglected more than 200 motor vehicle cases pending in his court. He, therefore, violated the law he is sworn to uphold and failed to meet his ethical obligations to diligently discharge his duties as a judge. Sections 100.3(a)(5) and 100.3(b)(1) of the Rules Governing Judicial Conduct.

Respondent failed to use the legal means available to him to compel defendants to answer traffic charges properly lodged in his court and, in 85 cases, neglected to collect fines he had imposed. Thus, he permitted defendants to avoid legal process by simply ignoring the summonses they were issued or the fines levied against them. Such neglect promotes disrespect for the law and the judiciary.

In the Phelps case, respondent, despite continual prompting by the defendant's lawyer, failed to complete the simple tasks required to promptly conclude the matter after the defendant had pled guilty.

Public sanction is appropriate for such misconduct. See Matter of Dougherty, 1985 Annual Report 123, 125 (Com. on Jud. Conduct, Apr. 16, 1984).

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

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

Mr. Sheehy was 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: October 25, 1990

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