

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

JEFFREY R. WERNER,

a Justice of the Newburgh Town Court,  
Orange County.

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**DETERMINATION**

THE COMMISSION:

Henry T. Berger, Esq., Chair  
Honorable Frances A. Ciardullo  
Stephen R. Coffey, Esq.  
Lawrence S. Goldman, Esq.  
Christina Hernandez, M.S.W.  
Honorable Daniel F. Luciano  
Mary Holt Moore  
Honorable Karen K. Peters  
Alan J. Pope, Esq.  
Honorable Terry Jane Ruderman

APPEARANCES:

Gerald Stern (Robert H. Tembeckjian, Of Counsel) for the Commission  
  
Larkin, Axelrod, Trachte & Tetenbaum, LLP (By John Ingrassia)  
for Respondent

The respondent, Jeffrey R. Werner, a Justice of the Newburgh Town Court,  
Orange County, was served with a Formal Written Complaint dated July 3, 2002,

containing one charge.

On August 2, 2002, 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 September 19, 2002, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a Newburgh Town Justice since January 1988. His current term of office commenced on January 1, 2000, and expires on December 31, 2003.
2. Respondent is an attorney admitted to practice law in the State of New York.
3. At approximately 8:00 P.M. on May 25, 2001, respondent and his wife were traveling in the City of Newburgh in respondent's car. Respondent was driving.
4. Shortly after 8:00 P.M. on May 25, 2001, Newburgh Police Lt. Oscar Lopez, who was driving a patrol car in the City of Newburgh, stopped respondent's car, approached the driver's side door and asked for respondent's driver's license and car registration.

5. In response to Lt. Lopez's request for respondent's driver's license and car registration, respondent handed over his driver's license and his Office of Court Administration photo identification card, which states that respondent is a "Town Justice."

6. As a result of the stop on or about May 25, 2001, respondent was charged with Speeding and Driving While Intoxicated.

7. In February 2002, after trial in the Newburgh City Court, respondent was acquitted of the Speeding and Driving While Intoxicated charges and all lesser included offenses.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1 and 100.2 of the Rules Governing Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

Respondent's conduct during a traffic stop created the appearance that he was asserting his judicial office in order to obtain special treatment by the police. The ethical standards prohibit a judge from using the prestige of judicial office to advance the judge's private interests (Section 100.2[C] of the Rules Governing Judicial Conduct). Judges are also required to avoid even the appearance of impropriety, both on and off the bench (Sections 100.1 and 100.2 of the Rules). By producing a card identifying him as a judge and handing it to the police officer who had stopped respondent's car, respondent

gratuitously interjected his judicial status into the incident, which was inappropriate. Matter of D'Amanda, 1990 Annual Report 91 (Commn on Jud Conduct). It was unnecessary for respondent to identify himself as a judge since the officer had simply requested respondent's driver's license and car registration.

Respondent's conduct was improper even in the absence of an explicit request for special consideration. *See* Matter of Edwards v. Commn on Jud Conduct, 67 NY2d 153, 155 (1986). Judges must be particularly careful to avoid any conduct that may create an appearance of seeking special consideration simply because of their judicial status. Public confidence in the fair and proper administration of justice requires that judges, who are sworn to uphold the law, neither request nor receive special treatment when the laws are applied to them personally.

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

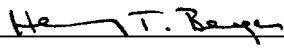
Mr. Berger, Judge Ciardullo, Ms. Hernandez, Ms. Moore, Judge Peters and Mr. Pope concur.

Mr. Coffey, Mr. Goldman, Judge Luciano and Judge Ruderman dissent and vote to reject the agreed statement of facts on the basis that the disposition is too severe.

**CERTIFICATION**

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

Dated: October 1, 2002

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