

**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

JAMES V. BURNS,

a Justice of the Ellery Town Court,  
Chautauqua County.

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**Determination**

THE COMMISSION:

Henry T. Berger, Esq., Chair  
Jeremy Ann Brown  
Stephen R. Coffey, Esq.  
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

Philip A. Cala for Respondent

The respondent, James V. Burns, a justice of the Ellery Town Court,  
Chautauqua County, was served with a Formal Written Complaint dated April 8, 1998,  
alleging that he operated a car while under the influence of alcohol. Respondent filed an  
answer dated April 27, 1998.

On September 11, 1998, 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 on the agreed upon facts, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On October 1, 1998, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Ellery Town Court since 1985.
2. On July 5, 1996, at 6:10 P.M., respondent was charged with Operating a Motor Vehicle With a Blood Alcohol Content in Excess of .10 Percent and Driving While Intoxicated after he had driven his automobile erratically and crossed the center of the road.
3. On December 18, 1997, respondent pleaded guilty to Driving While Ability Impaired in satisfaction of both charges.

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 and 100.2(A). Charge I of the Formal Written Complaint is sustained insofar as it is consistent with the findings herein, and respondent's misconduct is established.

A judge who operates a motor vehicle while his or her ability is impaired by alcohol violates the law and endangers public safety. (Matter of Henderson, 1995 Ann Report of NY Commn on Jud Conduct, at 118). Respondent's failure off the bench to abide by the laws that he is often called upon to apply in court undermines his effectiveness as a judge. (See, Matter of Wray, 1992 Ann Report of NY Commn on Jud Conduct, at 77, 80).

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

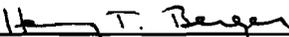
Mr. Berger, Ms. Brown, Mr. Goldman, Judge Marshall, Judge Newton, Mr. Pope, Judge Salisbury and Judge Thompson concur.

Mr. Coffey and Judge Luciano 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: October 20, 1998

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