

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

Determination

LESTER EVENS,

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

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THE COMMISSION:

Mrs. Gene Robb, Chairwoman  
John J. Bower, Esq.  
David Bromberg, Esq.  
E. Garrett Cleary, Esq.  
Dolores DelBello  
Victor A. Kovner, Esq.  
Honorable William J. Ostrowski  
Honorable Isaac Rubin  
Honorable Felice K. Shea  
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern, (Karen Kozac and Jean M. Savanyu,  
Of Counsel) for the Commission

Beldock Levine & Hoffman (By Myron Beldock)  
for Respondent

The respondent, Lester Evens, a judge of the New York  
City Civil Court, New York County, was served with a Formal  
Written Complaint dated August 30, 1984, alleging four instances  
of undignified behavior. Respondent filed an answer dated  
October 29, 1984.

By order dated November 20, 1984, the Commission designated Haliburton Fales, II, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on March 12, 13 and 14, 1985, and the referee filed his report with the Commission on May 13, 1985.

By motion dated May 24, 1985, the administrator of the Commission moved to disaffirm the referee's report, to adopt additional findings and conclusions and for a finding that respondent be censured. Respondent opposed the motion on June 12, 1985, and moved to confirm the referee's report and dismiss the Formal Written Complaint.

On June 20, 1985, the Commission heard oral argument, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Respondent is a judge of the New York City Civil Court and has been since 1978.
2. On February 27, 1984, respondent was sitting by designation in the New York City Criminal Court.
3. Beth Reilly, a defendant with numerous convictions for prostitution and loitering for the purpose of prostitution, appeared in respondent's court on two outstanding bench warrants.

4. Respondent re-sentenced Ms. Reilly to time served on one charge and ordered her to pay a \$40 mandatory surcharge owed in connection with the second charge.

5. Ms. Reilly indicated through counsel that a friend would come to court and pay the \$40. Respondent ordered Ms. Reilly to remain in the courtroom until the friend arrived and the fine was paid.

6. Thereafter, respondent saw Ms. Reilly sleeping in the courtroom and ordered a court officer to bring her to the bench to sit beside respondent.

7. Ms. Reilly was placed in a chair to the left and slightly behind respondent's chair.

8. Ms. Reilly remained on the bench until the court was recessed for lunch. After lunch, respondent ordered her returned to her chair beside him for the afternoon session. She was seated on the bench for at least three hours.

9. Respondent's orders to have Ms. Reilly seated at the bench drew laughter and snickers from court personnel.

10. While Ms. Reilly was seated beside respondent, he conducted other court business as usual. At one point during another case, respondent turned to Ms. Reilly and asked whether she believed what another defendant had said.

11. Respondent ignored the concerns expressed by court officers that Ms. Reilly's presence on the bench posed security problems.

12. Respondent eventually re-sentenced Ms. Reilly on the second charge to "time served" on the bench with him and waived the \$40 mandatory surcharge.

13. Respondent considers placing Ms. Reilly on the bench "very appropriate," but would not do so again because of the consequent criticism from court personnel and press coverage of the incident.

As to Charge II of the Formal Written Complaint:

14. On January 5, 1984, respondent was sitting by designation in the New York City Criminal Court.

15. Stanley Green, a criminal trial lawyer, appeared in respondent's court with a client.

16. Mr. Green testified at the hearing before the Commission that he had engaged quietly in a conversation with a court officer concerning the court calendar when respondent loudly and angrily told him to sit down, then asked Mr. Green's name and how long he had been practicing law and demanded that he face the audience and apologize for his conduct.

17. Respondent testified that Mr. Green had ignored several requests by a court officer to be seated. Respondent acknowledged that he asked Mr. Green's name and how long he had practiced law and asserted that Mr. Green became argumentative. Respondent testified that he then directed Mr. Green to face the audience and apologize.

18. Mr. Green was embarrassed and shaken and faced the audience and apologized as directed.

As to Charge III of the Formal Written Complaint:

19. On January 4, 1984, respondent presided over People v. Joseph Pollock in the New York City Criminal Court.

20. Debra Porder represented the defendant.

21. Respondent directed Ms. Porder to produce her client and ordered the case held for second call.

22. Ms. Porder attempted to address respondent, and the following colloquy took place:

THE COURT: Madam, I consider it serious.  
This is--don't turn your back on  
me when I'm--

COUNSELLOR: I'm going to get my client.

THE COURT: But allow me to finish.  
There's something called common  
courtesy. I hope to extend it to  
you. This is a criminal court  
and if you want to have a  
perception of being a gangland  
lawyer, a mouth-piece for the  
mob, then you come in and act  
that way. But I demand, I  
demand that you conduct yourself  
ethically and with skill, and I  
will not have defendants not  
appear. Do you understand? Go  
get your client.

COUNSELLOR: Your Honor, I meant no  
disrespect.

THE COURT:           Then I accept your apology. I suggest, in the future, in your anxiety, that you still wait until someone is done speaking. Thank you very much.

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As to Charge IV of the Formal Written Complaint:

23. On January 4, 1984, Brad Friedman appeared before respondent on a charge of Drinking an Alcoholic Beverage in Public.

24. Mr. Friedman, a 23-year-old advertising agency employee, pled guilty to carrying beer on the street in an open container.

25. Respondent then stated:

...That particular beer has just cost you twenty-six dollars and twenty cents. And let me tell you something. Every time you do it, for every one of those six beers in that six-pack that you're going to do in the future, and clearly you are, I wish I could be their big brother that I could be there imposing twenty-six dollars and twenty cents on you. You know why? 'Cause you're a damn fool. You deserve to pay twenty-six dollars each time you do this big macho beer drinking thing. Go over and pay your fine. If you don't pay it you spend two lovely evenings in Rikers Island. You think it's funny, sir? I mean they'd love a juicy little white boy like you. Go over and pay your fine. Twenty five dollars.

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)(2) and 100.3(a)(3) of the Rules Governing Judicial Conduct and Canons 1, 2A, 3A(2) and 3A(3) of the Code of Judicial Conduct. Charges I through IV of the Formal Written Complaint are sustained, and respondent's misconduct is established. Respondent's motion is denied.

The established facts indicate a pattern of misconduct in which respondent overreacted to what he perceived as displays of disrespect for the court. His responses were beyond the scope of his judicial authority and lacking in the dignity and courtesy expected of every judge.

Whether or not respondent correctly perceived that the lawyers and litigants before him were disrespectful should not be at issue. The controlling factor is that in each instance respondent's conduct, whatever may have provoked it, was inappropriate, unprofessional and intemperate.

Respondent's decision to place a convicted prostitute on the bench with him impaired, rather than enhanced, respect for the court. The judge's elevated station in the courtroom is symbolic of authority and honor. Respondent demeaned the court by sharing his post with a defendant, particularly one who, by respondent's own account, had already demonstrated disrespect for the court. Respondent should have been aware of this when his direction to seat her at the bench drew laughter in the

courtroom. Instead, respondent still sees it as an appropriate act, never to be repeated only because of the reaction it drew.

Respondent further encouraged disrespect for the court by making an aside to the defendant concerning another case that came before him while she was on the bench.

Respondent's humiliation of attorneys Stanley Green and Debra Porder constituted an abuse of his power to maintain order and decorum in the courtroom. Whatever the situation, it was unnecessary to require Mr. Green to face the audience and apologize and to intimate that Ms. Porder was unethical and a "mouth-piece for the mob" because she turned around in the courtroom. Unfortunately, respondent fails to perceive the impropriety of his conduct.

It was unjustified and inexcusable for respondent to mention time in jail and graphically depict with racial overtones the brutal treatment that might be received there by a defendant who had pled guilty to a minor violation. Respondent was without basis in concluding that defendant Brad Friedman would engage in similar conduct in the future and in suggesting that he would not pay his fine.

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

Mr. Bower, Mr. Bromberg, Mr. Cleary, Mrs. DelBello, Judge Ostrowski and Mr. Sheehy concur, except that Mr. Cleary dissents as to Charges II and III only and votes that the charges be dismissed.



Mrs. Robb dissents as to Charges I and II and votes that the charges be dismissed and dissents as to sanction and votes that respondent be admonished.

Mr. Kovner dissents as to Charges II and III and votes that the charges be dismissed and dissents as to sanction and votes that respondent be admonished.

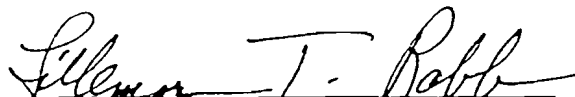
Judge Shea dissents as to Charges I and III and votes that the charges be dismissed and dissents as to sanction and votes that respondent be admonished.

Judge Rubin did not participate.

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 18, 1985

  
Lillemor T. Robb, Chairwoman  
New York State Commission on  
Judicial Conduct

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DISSENTING  
OPINION BY  
MR. KOVNER

The remarks which form the basis of Charges II and III do not constitute judicial misconduct warranting public discipline.

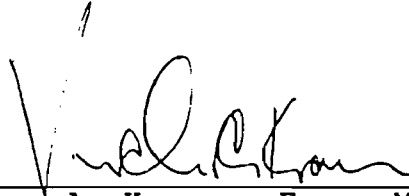
The evidence regarding the colloquy with Ms. Porder establishes that she turned her back on the Court while respondent was addressing her. Respondent's version of the events was corroborated by two impartial witnesses and Ms. Porder neither complained nor testified at the hearing. Most significantly, Ms. Porder apologized and respondent promptly accepted her apology. The language of the Court, while far from ideal, did not constitute misconduct.

The criticism of Mr. Green was more severe and respondent's direction that Mr. Green turn to apologize to those in Court was not appropriate. Nonetheless, such isolated remarks in a busy overcrowded part do not warrant public discipline. As to these exchanges with counsel, I believe the majority gave insufficient weight to the findings of fact by the distinguished Referee, who noted

My very strong impression, after spending three full days observing the Judge and hearing him testify for several hours on direct and cross, is that he is a compulsively honest witness with a meticulous regard for facts.

I concur as to Counts I and IV and believe admonition to be the appropriate sanction.

Dated: September 18, 1985

A handwritten signature in cursive script, appearing to read "Victor A. Kovner".

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Victor A. Kovner, Esq., Member  
New York State Commission  
on Judicial Conduct

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DISSENTING  
OPINION BY  
JUDGE SHEA

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

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The allegations of Charge I, although proven, do not constitute misconduct. The placing of Ms. Reilly on the bench beside him by respondent is an act within a judge's discretion. Although reasonable people may reach differing conclusions as to its appropriateness, I do not believe respondent's action encouraged disrespect for the court.

Nor was there misconduct or an abuse of power in respondent's statements to Debra Porder. It is not the function of this Commission to substitute its judgment for the words of a judge uttered in a busy courtroom. While judges must strive to be courteous, not every departure from the ideal is misconduct. I concur with the views expressed with regard to Charge III by the co-dissenter.

I agree with the majority that Charges II and IV were sustained; respondent's conduct was intemperate and his statements humiliated an attorney in one case and a defendant in the other.

The appropriate sanction is admonition.

Dated: September 18, 1985



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Honorable Felice K. Shea, Member  
New York State Commission  
on Judicial Conduct