

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

W. EUGENE SHARPE,

a Justice of the Supreme Court, Eleventh  
Judicial District, Queens County.

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**Determination**

THE COMMISSION:

Mrs. Gene Robb, Chairwoman  
Honorable Fritz W. Alexander, II  
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

APPEARANCES:

Gerald Stern (Robert Straus, Of Counsel)  
for the Commission.

Flamhaft, Levy, Kamins, Hirsch & Booth (By William H.  
Booth) for Respondent

The respondent, W. Eugene Sharpe, a justice of the Supreme Court, Eleventh Judicial District, was served with a Formal Written Complaint dated March 31, 1982, alleging that he improperly cited for contempt an attorney appearing before him and ordered the attorney held in detention. Respondent filed an answer dated May 28, 1982.

By order dated June 29, 1982, the Commission designated Seymour M. Klein, Esq., as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on October 18, 1982, and the referee filed his report with the Commission on February 8, 1983.

By motion dated March 23, 1983, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be censured. Respondent opposed the motion on April 13, 1983. The Commission heard oral argument on the motion on April 20, 1983, at which respondent appeared by counsel, and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent is a justice of the Supreme Court, Eleventh Judicial District, assigned to the Criminal Division, and has been since January 1979.

2. Seymour Roth is an assistant district attorney in the Queens County District Attorney's Office and has been a practicing attorney for 25 years.

3. On Friday, September 4, 1981, respondent presided at a hearing in People v. Frank Green, in which the defendant was charged with Attempted Murder. Mr. Roth represented the prosecution.

4. Vincent Pepe, a New York City police officer, was on the witness stand when the hearing was adjourned until Tuesday, September 8, 1981. Officer Pepe, who was testifying for the prosecution, was directed to return at 9:30 A.M. on September 8 to continue his testimony.

5. After the hearing was adjourned on September 4, Mr. Roth arranged to have Officer Pepe assigned to the District Attorney's Office on September 8 and directed the officer to meet him at 9:30 A.M. that day.

6. On Tuesday, September 8, 1981, at about 9:30 A.M., when Officer Pepe failed to meet him at his office, Mr. Roth attempted unsuccessfully to reach the officer by telephone.

7. At about 9:35 A.M., Mr. Roth telephoned respondent's law secretary, Marvin Scharf, to inform him that Officer Pepe had not yet arrived, that Mr. Roth was trying to reach him and that they would come to the courtroom as soon as the officer arrived.

8. Shortly before 10:00 A.M., Mr. Scharf called Mr. Roth and told him that respondent wanted him in the courtroom immediately.

9. Mr. Roth again attempted to reach Officer Pepe and then went to respondent's courtroom.

10. Respondent came on the bench, and the following colloquy took place:

\* \* \*

THE COURT: Where is the police officer, sir?

MR. ROTH: Your Honor, Officer Pepe came up to our office when we adjourned last Friday, and we told him to be back here in court.

THE COURT: I told him to be back, also,  
at 9:30 this morning.

MR. ROTH: That's correct.  
I told him to be in my office by  
9:30. He said he would. I called  
the Anti-Crime Unit in Far Rockaway  
three times. I was unable to get  
to anybody.

People at the Precinct put me in  
touch with the Anti-Crime Unit,  
it's a separate unit in Far Rockaway,  
and nobody answered the phone. I  
just called two minutes ago again,  
and the line was busy.

I did speak to a Detective Richardson  
this morning. He told me he did not  
get the message which we had left.  
That's myself and also Pepe called  
Friday and told the Detective  
Richardson to be down here at nine  
o'clock this morning at my office.  
He told me he did not get those  
messages, but he would come down to  
my office; and he said he'd be down  
in my office--

THE COURT: Why would he do us a favor? I don't  
need him to do this Court any favors.  
He was directed to be here this morning  
at 9:30.

MR. ROTH: I am referring to another witness,  
Richardson; Detective Richardson.

THE COURT: That's not who we need. Pepe was in  
the process of being cross-examined  
as I recall it, when we adjourned this  
matter on Friday.

MR. ROTH: Your Honor, I have no idea why he is  
not here, and I am continually trying  
to reach the Anti-Crime Unit and have  
not been able to reach anybody yet.

THE COURT: What do you wish to do? We are not going to allow you, nor any police officer, to determine when this Court transacts its business, and it is the Court's business, and not the Prosecutor's business. Is that clear to you, sir?

MR. ROTH: No, I am sorry. I didn't understand.

THE COURT: I will help, explain you--

MR. ROTH: May I tell you what my quandry is?

THE COURT: What quandry? What is your quandry?

MR. ROTH: I understand, and I wanted to proceed this morning at 9:30.

THE COURT: Then it's your responsibility to have your witnesses here.

MR. ROTH: I am sorry, I can't be responsible--

THE COURT: Why is it you can't be responsible?

MR. ROTH: --for anything but my duty.

THE COURT: What is your duty? Your duty is to have your--

MR. ROTH: I understand my duties.

THE COURT: Your duty is to have witnesses here. Isn't that your duty, sir? What is your duty?

MR. ROTH: I can only try my best.

THE COURT: Trying your best is not enough. Not for this Court.

MR. ROTH: I can't do anything past that.

THE COURT: You couldn't do anything past that.

MR. ROTH: I can't do anything but try my best.

THE COURT: Sir, if you don't get the officer in here in two minutes, I am going to cite you for contempt to this Court. Two minutes. Two minutes, sir. Did you hear that?

MR. ROTH: I am sorry. I won't be able to.

THE COURT: You are cited for contempt. Put him in, sir.

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11. When respondent told Mr. Roth that he would cite him for contempt if he did not produce Officer Pepe in court in two minutes, respondent knew that Mr. Roth would be unable to produce the witness within that time.

12. Before he cited Mr. Roth for contempt, respondent did not warn Mr. Roth "that his conduct [was] deemed contumacious and give him an opportunity to desist..." as required by Section 701.4 of the Appellate Division Rules.

13. Before he cited Mr. Roth for contempt, respondent did not give Mr. Roth "a reasonable opportunity to make a statement in his defense or in extenuation of his conduct," as required by Section 701.2(c) of the Appellate Division Rules.

14. After he cited Mr. Roth for contempt, respondent did not set forth in an order and a mandate of commitment the particular circumstances of the offense, as required by Sections 752 and 755 of the Judiciary Law.

15. Mr. Roth had engaged in no improper, discourteous or contumacious conduct prior to or at his appearance before respondent on September 8, 1981. Mr. Roth had never before been cited for contempt or warned that he might be held because of contumacious conduct.

16. After Mr. Roth was cited for contempt, respondent ordered Mr. Roth escorted from the courtroom by uniformed officers and held in the detention area for prisoners, where he remained for from 15 to 45 minutes. The defendant, Frank Green, was also taken into the detention area. While passing Mr. Roth, Mr. Green laughed at the prosecutor. While Mr. Roth was being questioned by officers in the detention area, he was told to keep his voice down so that Mr. Green could not overhear the prosecutor giving his address.

17. Officer Pepe eventually arrived in court and explained that he had been tied up in traffic.

18. Mr. Roth was ordered back into the courtroom by respondent. Respondent vacated the contempt order and ordered Mr. Roth's record expunged. He did not apologize to Mr. Roth.

19. Respondent previously had experiences in which he felt that other assistant district attorneys had misled him concerning the availability of witnesses. Respondent misdirected his annoyance, anger and frustration with these other prosecutors and with Officer Pepe at Mr. Roth.

20. In citing Mr. Roth summarily for contempt and ordering

him to be placed in the detention area under guard, respondent abused his contempt power and improperly subjected Mr. Roth to public humiliation and embarrassment.

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)(1) and 100.3(a)(3) of the Rules Governing Judicial Conduct; Canons 1, 2A, 3A(1) and 3A(3) of the Code of Judicial Conduct; Sections 752 and 755 of the Judiciary Law, and Sections 701.2(c) and 701.4 of the Appellate Division Rules. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

By summarily citing Mr. Roth for contempt and ordering him detained, respondent engaged in a gross abuse of power. There could be no rational basis for citing for contempt a lawyer who, by respondent's own admission, had engaged in no improper, discourteous or contumacious conduct. Even if Mr. Roth had acted disrespectfully, respondent's hasty citation, made without giving the attorney a right to explain or purge himself of any contempt, was improper.

Respondent misdirected at Mr. Roth his anger with Officer Pepe and Mr. Roth's colleagues in the District Attorney's Office. In doing so, he departed from the high standards of conduct expected of every judge. In depriving Mr. Roth of his liberty, even temporarily, respondent deviated from the confines of the law he was sworn to uphold.



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

Mrs. Robb, Judge Alexander, Mr. Bromberg, Mr. Cleary, Mrs. DelBello, Judge Ostrowski and Judge Shea concur.

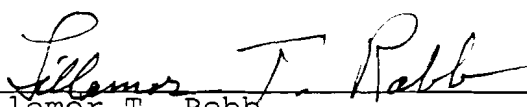
Mr. Bower dissents as to sanction only and votes that respondent be censured.

Mr. Kovner and Judge Rubin 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: June 7, 1983

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