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54/08/13 Merrick Picks Judge Thomas To Preside

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Merrick Picks Judge Thomas To Preside

BY HOWARD BEAUFAIT

Dr. Samuel H. Sheppard today won a preliminary skirmish in Common Pleas Court in his legal fight against a warrant alleging he beat his wife to death.

Common Pleas Judge Frank J. Merrick held that Gershom M. M. Barber, Council president of Bay Village, was prejudiced and not qualified to arraign the osteopath on a first degree murder charge.

Judge Merrick assigned the preliminary hearing to Common Pleas Judge William K. Thomas. It will be heard Monday at 9:15 a. m. at Criminal Courts Building.

The victory for Dr. Sheppard was the first in three attempts to free himself from the murder charge. The court ruled against him on a writ of habeas corpus and a writ of prohibition, both aimed at the legality of the murder warrant.

Defense Counsel William J. Corrigan filed an affidavit of prejudice against Barber, who was assigned as acting mayor because Mayor J. Spencer Houk dropped out as magistrate. Corrigan alleged that Barber had disqualified himself as a magistrate by expressing an opinion that Dr. Sheppard was guilty and should have been arrested immediately after the crime on the morning of July 4.

Judge Merrick said in his ruling: "I have asked my associate, Judge Thomas, to accept this assignment by transfer. He has acceded to my request. I am happy that he is available and willing to perform this arduous task.

"Magistrate Barber appeared to this court to be a fine up-standing citizen who might try to do his very best in arriving at a just decision. But this court is of the opinion that he had expressed himself on several occasions to the indication that he

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Bay Court Ruled Out Of Murder Hearing

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had a pre-disposition of thoughts and opinions in the case.

"This court finds that such a state of mind disqualifies him to sit further in this matter.

"Where the life of a human being is at stake legal and moral responsibility is increased by the zealous care with which the law regards such life and the trial of one thus charged calls for the strictest observance of the statutory provisions made for the protection of such life."

Barber expressed surprise at Judge Merrick's decision. "I did not expect to be ruled out of

the case, but it takes me off the spot," he said.

Judge Thomas in setting the preliminary examination of Dr. Sheppard for Monday said that he would confer this afternoon with Corrigan and a representative of the county prosecutor's office.

The public will be barred from the Monday hearing, Judge Thomas said.

Judge Merrick held that the verdict and judgment in the Sheppard case "must not be the reflex of the clamor of the populace, or the result of prejudice, passion or ill will against the accused."

Barber Acted for Mayor

After hearing defense claims of innocence and the prosecution's contention that there was "probable cause" for the arrest of Dr. Sheppard on a first degree murder charge, Judge Thomas may either free the defendant or order him held for grand jury indictment.

Barber, who issued the murder warrant, acted for Mayor Houk, who disqualified himself because he was a close friend of Dr. Sheppard and who is expected to be a witness in the murder case.