

SUPREME COURT OF THE STATE OF
NEW YORK, COUNTY OF ALBANY

In the Matter of the Application of
The NEW YORK STATE COMMISSION
ON JUDICIAL CONDUCT,

**ATTORNEY
AFFIRMATION**

Petitioner,

Index No.: 8115-22

For an Order Pursuant to CPLR 2308 compelling
compliance with a subpoena

-against-

GREGORY PEIREZ, ESQ., and
SHAWN SMITH, ESQ.,

Respondents.

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SHRUTI JOSHI, an attorney duly admitted to practice in the State of New York, hereby affirms and states the following to be true under the penalties of perjury:

1. I am a Staff Attorney employed by the New York State Commission on Judicial Conduct ("Commission"). I am the attorney assigned to the Commission's investigation underlying the subpoenas that are subject of the above-captioned matter.
2. On September 13, 2022, I telephoned Mr. Shawn Smith at his office phone number [REDACTED] in response to his request to speak to a Commission

attorney about the list of emails that he did not wish to produce and/or would need to produce a privilege log for.

3. At the outset of this phone call, Mr. Smith expressed concerns over running into potential ethical issues by producing some of the emails in his possession that were subject of the Commission's subpoena.

4. I advised Mr. Smith to prepare a privilege log for any emails that he did not believe he should have to produce to the Commission, and I explained that he would need to briefly describe each such email and specifically state the privilege that applied.

5. When he asked me if he needed consent from other people who were on these emails, I repeated that if he believed anything was privileged, he could use a privilege log to indicate the emails he was not producing.

6. To avoid getting into the substantive issues with him, I advised him that he could consult an attorney if he was not sure of whether a privilege applied or not, but that I could not give him any legal advice.

7. I explained to Mr. Smith that the Commission has broad investigative powers and the subpoena that was issued to him was relevant to the Commission's investigation.

8. I added that the Commission was under no obligation to disclose to him the subject matter of the investigation and that the Commission's proceedings were confidential.

9. Mr. Smith repeatedly asked if any of the emails he produced would put him in any kind of trouble, professionally and/or ethically, to which I responded by reminding him of his obligation to comply with the subpoena.

10. I told him again that I could not advise him on any substantive issues, and he would have to seek his own counsel if he needed any legal advice.

11. Mr. Smith asked me if his attorney's fees would be covered by the Commission if he were to seek counsel and I advised him that the Commission would not cover his attorney's fees.

12. After speaking with my supervisor, I telephoned Mr. Smith again on the same day on his cell phone number [REDACTED] and confirmed that the Commission would not cover his attorney's fees should he retain counsel.

13. When Mr. Smith asked if we would limit our subpoena to a specific subject matter, I advised him that the subpoena was already limited in that it was only asking for emails between two specific email addresses for a period of less than two weeks. I told him that the Commission would not limit the subpoena any further.

14. Mr. Smith said that it would not take him more than five minutes to send us the emails, but he just wanted to make sure it would not put him in any trouble if he did.

15. He also asked me if the Commission could seek additional emails in the future and I said that it was possible if we had indication that there could be other emails that would be relevant to the Commission's investigation.

16. I advised him again that the proceedings were confidential and that he was requested to maintain confidentiality – which the subpoena itself plainly states on its face. *See* Affirmation of Robert H. Tembeckjian in Support of Order to Show Cause and Petition to Compel Compliance and Seal Record, dated October 21, 2022, Exhibit 1.

17. At no point during my conversations with Mr. Smith did I advise him that the Commission had unlimited powers to access all emails or that he should hire an attorney to move to quash the Commission's subpoena if he thought that the Commission had anything less than unlimited access to his private email account.

Dated: November 14, 2022
Albany, New York



Shruti Joshi, Staff Attorney II
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