

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

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

Petitioner,

**ATTORNEY  
AFFIRMATION**

For an Order Pursuant to Section 753 (A)(3) of the  
Judiciary Law

Index No.: 8115-2

-against-

GREGORY PEIREZ, ESQ., AND SHAWN  
SMITH, ESQ.,

Respondents,  
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**DENISE BUCKLEY**, 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 Senior Litigation Counsel employed by the New York State  
Commission on Judicial Conduct (“Commission”), Petitioner in this proceeding,  
and am fully familiar with all the facts and circumstances set forth herein.
2. I submit this Affirmation in support of the Commission’s motion for a  
contempt order pursuant to Section 753(A)(3) of the Judiciary Law against the  
Respondents in this matter for failing to comply with the Court’s Decision and

Order dated January 3, 2023, which required them to appear at the Commission's Albany office to produce certain email records and provide testimony. The Commission brings this motion by Order to Show Cause pursuant to Judiciary Law § 756.

### **PROCEDURAL BACKGROUND**

3. By Decision and Order dated January 3, 2023, this Court granted a motion by the Commission seeking to compel Respondents Gregory Peirez, Esq., and Shawn Smith, Esq., to comply with a Commission subpoena requiring them to give testimony under oath and to produce copies of certain emails in their possession, which the Commission has reason to believe are reasonably related to the Commission's investigation of a judge of the Unified Court System. A copy of the Court's Decision and Order is attached hereto at **Exhibit ("Ex.") A**, along with the Notice of Entry of same served on counsel for Respondents on January 9, 2023.

4. As set forth in the Court's Decision and Order, the Court directed Respondents "to appear at the Commission's office at Coming Tower, Suite 2301, Empire State Plaza, Albany, New York, on a date set by the Commission not less than 10 days from the date of the Decision and Order, to give testimony under oath and to produce copies of all emails in their possession for the period June 20 to July 1, 2022 between 'gpeirez@[REDACTED]' and '[REDACTED]' and between 'smithlaw9@[REDACTED]' and '[REDACTED]'." **Ex. A**, Decision

and Order at p.9.

5. The Court's Decision and Order was served on Respondents' Counsel with Notice of Entry on January 9, 2023. *See Ex. A.*

6. On the afternoon of January 11, 2023, I initiated a conference call to attorney Michelle A. Storm of Monaco Cooper Lamme & Carr, PLLC, counsel for Respondents in this matter. The parties to the call were the undersigned, Ms. Storm, and Kathleen E. Klein, Esq., a Senior Attorney the Commission.

7. The purpose of the conference call was two-fold: (1) to advise, in response to a query Ms. Storm had raised earlier that day, that the Commission was setting January 19, 2023, for the testimony and production of email records of her clients, Mr. Shawn Smith and Mr. Gregory Peirez, pursuant to the Court's January 3, 2023, Decision and Order; and (2) to introduce Ms. Storm to Ms. Klein, who would serve as her contact person for the purpose of the production of records and appearance for testimony by her clients.

8. During the brief phone call, I advised Ms. Storm that the Commission was setting January 19, 2023, for her clients' testimony and production of emails, and I attempted to introduce Ms. Storm to Ms. Klein, but Ms. Klein was unable to hear Ms. Storm due to a technical issue with the call.

9. Due to difficulty with the phone connection, I advised Ms. Storm that Ms. Klein would reach out to her directly and I ended the phone call.

10. As set forth in the accompanying Affirmation by Ms. Klein (“Klein Aff.”), Ms. Klein spoke with Ms. Storm shortly thereafter and advised her that the Commission had set January 19, 2023, at 10:00 AM for the production of email records by her clients and appearance for testimony at the Commission’s office at Corning Tower, Albany, New York. *See Klein Aff.*, ¶¶ 6-7.

11. Ms. Klein confirmed the scheduled date and location in a letter emailed to Ms. Storm on January 12, 2023. *See Klein Aff.*, **Ex. A.**

12. Although the Commission received a read receipt indicating that Ms. Storm opened the email on January 12, 2023, the Commission received no further communication from Ms. Storm regarding the scheduled date for production of records and appearance of her clients to testify until approximately 2:00 PM on January 18, 2023, when an individual identifying herself as Pauline Morris, a paralegal working at Ms. Storm’s office, phoned Ms. Klein and requested an adjournment. Ms. Klein advised Ms. Morris that she was not authorized grant an adjournment, and that the Commission would get back to Ms. Storm and her office shortly. *See Klein Aff.*, ¶¶ 10-13.

13. At approximately 4:08 that same afternoon, the Commission emailed a letter to Ms. Storm agreeing to adjourn the testimony of Mr. Peirez and Mr. Smith to January 25, on the condition that, by 10:00 AM on January 19, 2023, each Respondent furnish the Commission with a sworn statement of engagement. The

Commission asked for a similar statement from Ms. Storm in the event that she, too, was claiming to be otherwise engaged. However, the letter made clear in bold type that the Commission was not consenting to any adjournment as to the email production, which did not require Respondents to be present to comply with their duty to produce the requested emails on January 19, 2023. The Commission advised that the emails would be accepted whether transmitted in person, by messenger or electronically. A copy of the letter, along with the email to Ms. Storm attaching the letter, is attached hereto as **Ex. B**.

14. As set forth in her Affirmation, Ms. Klein then spoke with Ms. Morris (the paralegal at Ms. Storm's office), alerting her to the letter that had been emailed to Ms. Storm. Ms. Klein requested and was provided Ms. Morris' email address so that Ms. Klein could forward the letter to Ms. Morris as well. Ms. Klein then forwarded the email and letter to Ms. Morris *See Klein Aff.*, ¶¶ 16-17.

15. As of the time of execution of this Affirmation, Respondents have failed to appear for testimony or produce the email records on the date set by the Commission, as required by the Court's Decision and Order of January 3, 2023. Nor have Respondents provided sworn statements of engagement explaining their failure to appear.

16. Respondents' failure to appear for testimony and produce the emails on the date set by the Commission demonstrates a blatant lack of respect for

Commission proceedings and this Court's Decision and Order. Respondents and their counsel were given eight days' advance notice of the appearance, yet made no attempt to seek an adjournment until the afternoon before the testimony and production were scheduled to proceed. Moreover, Respondents and their counsel ignored the Commission's reasonable request for sworn statements of engagement explaining the eleventh-hour request for an adjournment.

**RESPONDENTS ARE IN CONTEMPT OF THE COURT'S  
DECISION AND ORDER**

17. Section 753(A)(3) of the Judiciary Law provides in relevant part:

A court of record has power to punish, by fine and imprisonment, or either, a neglect or violation of duty, or other misconduct, by which a right or remedy of a party to a civil action or special proceeding, pending in the court may be defeated, impaired, impeded, or prejudiced, in any of the following cases . . .

3. A party to the action or special proceeding . . . for any other disobedience to a lawful mandate of the court.

18. The following elements must be established to sustain a civil contempt: (1) a lawful judicial order expressing an unequivocal mandate must have been in effect and disobeyed; (2) the party to be held in contempt must have had knowledge of the order, although it is not necessary that the order actually have been served upon the party; and (3) failure to comply with the court's order has prejudiced the rights of a party to the litigation. *McCain v. Dinkins*, 84 N.Y.2d 216, 226 (1994).

19. All three elements are present here. The Court's January 3, 2023, Decision and Order specifically required Respondents to produce the emails and provide testimony on a date set by the Commission not less than 10 days from the date of the Court's Decision and Order, and Respondents failed to do so. Respondents' counsel confirmed receipt of the Court's Decision and Order and was notified orally and in writing of the date. In addition, the Commission's rights have been prejudiced because: (a) Respondents' willful failure to comply with a lawfully issued Commission subpoena compelled the Commission to institute the instant CPLR Article 78 proceeding; (b) Respondents have delayed Commission proceedings by failing to alert the Commission to their claimed need for an adjournment until the afternoon before the appearances and production were scheduled to proceed; and (c) the timing of and method by which Respondents requested an adjournment (an eleventh hour request advanced by a paralegal with no opportunity for Commission counsel to engage with Respondents' counsel), combined with their failure to respond to the Commission's request for affirmations of engagement, shed doubt on the sincerity of their need for an adjournment and intent to comply with the Court's Decision and Order. As for the latter feature of Respondents' adjournment request, it is important to note that the paralegal who communicated the request did not suggest an alternative adjourned date but merely indicated the vague possibility of availability sometime over the

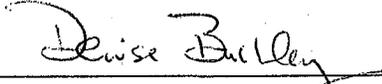
next two weeks.

20. The Commission is the agency charged with “protect[ing] the integrity of the judiciary,” “preserv[ing] and enhanc[ing] the public’s confidence in its courts,” and ensuring that only qualified judges serve as part of our judicial system. *Matter of Stern v. Morgenthau*, 62 NY2d 331, 339 (1984).

21. As the Court of Appeals has observed, “there is “hardly . . . a higher governmental interest” than the State’s “overriding interest in the integrity . . . of the judiciary.” *Nicholson v State Comm’n on Judicial Conduct*, 50 NY2d 597, 607 (1980).

22. In view of the compelling nature of the interests prejudiced by Respondents’ failure to comply with the court’s Decision and Order, this is a case where the court must exercise its “inherent power to enforce compliance with [its] lawful order[ ] through civil contempt.” *Shillitani v United States*, 384 US 364, 370 (1966).

Dated: January 20, 2023  
Albany, New York

  
\_\_\_\_\_  
Denise Buckley, Senior Litigation Counsel  
New York State Commission on Judicial Conduct  
Empire State Plaza, Corning Tower, Suite 2301  
Albany, New York 12223



NEW YORK STATE  
COMMISSION ON JUDICIAL CONDUCT

ROBERT H. TEMBECKJIAN  
ADMINISTRATOR & COUNSEL

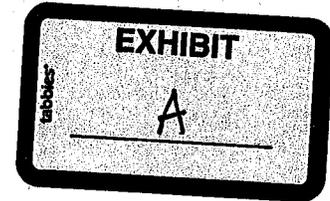
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ALBANY, NEW YORK 12223

518-453-4600 518-299-1757  
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EDWARD LINDNER  
DEPUTY ADMINISTRATOR  
FOR LITIGATION

DENISE BUCKLEY  
SENIOR LITIGATION COUNSEL

DAVID P. STROMES  
LITIGATION COUNSEL



**CONFIDENTIAL**

January 9, 2023

VIA e-mail and first-class mail

Michelle A. Storm, Esq.  
Monaco Cooper Lamme & Carr PLLC  
1881 Western Avenue, Suite 200  
Albany, New York 12203  
[REDACTED]@mclclaw.com

***Re: New York State Commission on Judicial Conduct v  
Peirez and Smith, Index No. 8115-22***

Dear Ms. Storm,

Enclosed herewith by way of service on you please find the Decision/Order/Judgment, dated January 3, 2023, with Notice of Entry in the above-referenced matter, together with the Court's Sealing Order, dated January 3, 2023.

As previously agreed, we are serving you by e-mail. As a courtesy, we also are sending you a copy via first-class mail.

Very truly yours,

*Denise Buckley*  
Denise Buckley  
Senior Litigation Counsel

Enclosures

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,

**SEALING ORDER**

Index No.: 8115-22

Petitioner,

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

-against-

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

Respondents.

COPY

(Supreme Court, Albany County)

(Justice Gerald W. Connolly, Presiding)

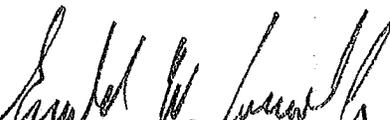
The Court having found good cause at this juncture to restrict access to certain  
information in the above-referenced documents, it is hereby

**ORDERED**, that the original Decision and Order, dated January 3, 2023 shall be filed  
with the Albany County Clerk under seal, kept confidential, and not made available to any  
person, or public or private entity, except the parties and their attorneys, unless by further order  
of the Court.

**SO ORDERED.**

**ENTER.**

Dated: January 3, 2023  
Albany, New York



HON. GERALD W. CONNOLLY  
Acting Supreme Court Justice

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

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**NOTICE OF ENTRY**

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

Petitioner,

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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Index No.: 8115-22

**PLEASE TAKE NOTICE** that the within is a true copy of the Decision,  
Order and Judgment entered in this proceeding in the Office of the County Clerk of  
Albany County on January 9, 2023.

Dated: January 9, 2023  
Albany, New York

  
DENISE BUCKLEY  
Senior Litigation Counsel  
New York State Commission on Judicial Conduct  
Empire State Plaza  
Corning Tower, Suite 2301  
Albany, New York 12223

TO: Michelle A. Storm, Esq.  
Monaco Cooper Lamme & Carr, PLLC  
Counsel for Respondents  
1881 Western Avenue  
Suite 200  
Albany, New York 12203

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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IN THE MATTER OF THE APPLICATION OF  
THE NEW YORK STATE COMMISSION ON  
JUDICIAL CONDUCT,

Petitioner,

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

**DECISION/ORDER/JUDGMENT**

Index No.: 8115-22

-against-

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

Respondents.

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(Supreme Court, Albany County, Special Term)

APPEARANCES: Robert H. Tembeckjian, Esq.  
New York State Commission on Judicial Conduct  
Empire State Plaza  
Corning Tower, Suite 2301  
Albany, NY 12223

Michelle A. Storm, Esq.  
Monaco Cooper Lamme & Carr PLLC  
1881 Western Avenue, Suite 200  
Albany, NY 12203

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Before the Court is the application of Petitioner New York State Commission on Judicial Conduct ("Commission") for an Order and Judgment pursuant to CPLR §§ 2308 (b) and 411 directing Respondents to appear at the Commission's office to give testimony under oath and to produce copies of all emails in their possession for the period June 20 to July 1, 2022 between certain specified email accounts. Petitioner asserts, via such application, that such electronic records are reasonably related to the Commission's investigation into complaints against a Judge of the

Unified Court System alleging that he, *inter alia*, “...engaged in inappropriate email correspondence” (Tembeckjian Affirmation, ¶4). Petitioner asserts that it has served subpoenas for the above-referenced electronic communications on the Respondents and were subsequently informed (by letter of October 19, 2022) by Counsel for the Respondents that they did not intend to comply with the subpoena.

Petitioner has also applied for Sealing of the within record as well as the ability to submit *ex parte in camera* documentation to the Court regarding the basis of the referenced investigation and subpoenas. In so applying, the Commission references the confidentiality provisions of Judiciary Law §45 as well as caselaw supporting the proposition that such submission of evidence in support of subpoena authority in a confidential investigation is appropriate. The Commission also references 22 NYCRR §216.1, setting forth the ability of the Court to seal its records upon a written showing of good cause. The application for Sealing of the Order to Show Cause and its supporting papers was preliminarily granted by the Court in the executed Order to Show Cause.

The *ex parte in camera* documentation submitted includes a filed Complaint that constitutes a portion of the underlying basis for the investigation. Submitted along with such documentation is the Affirmation of the Administrator of the Commission which, *inter alia*, discusses aspects of the Commission’s investigation.

Respondents oppose the application and have brought a cross motion to quash the referenced subpoenas on the grounds that such subpoenas improperly fail to provide any subject matter for the investigation. With the exception of such demand, Respondents do not appear to take issue with the application for confidentiality (Storm Affirmation, ¶21), submission of *in camera ex parte*

information, and sealing. Further, Respondents assert that they "...do not contest that the petitioners are engaged in a meaningful investigation..." (Storm Affirmation, ¶25).

The Commission is an independent agency charged with protect[ing] the integrity of the judiciary, preserv[ing] and enhanc[ing] the public's confidence in its courts, and ensuring qualified judges serve as part of our judicial system. It is constitutionally authorized to receive, initiate, investigate and hear complaints of judicial misconduct and has exclusive jurisdiction over such complaints. . . . We have recognized that the Commission must be free to conduct . . . investigation[s], and that the effectiveness of its inquiries necessarily requires the free flow of information to the Commission. (*Matter of NYS Commission on Judicial Conduct v Rubenstein*, 23 NY 3d 570, 578 [2014][internal quotations and citations omitted]).

The Court of Appeals has held that "... a motion to quash or to compel compliance raises only the issues of the authority of the investigating body and whether the inquiry falls within the scope of that authority" (*Nicholson v. State Com. on Judicial Conduct*, 50 NY2d 597, 610 [1980] [internal citations omitted]), and, to sustain investigatory subpoenas, "...the commission need only make a preliminary showing that the information sought is reasonably related to a proper subject of inquiry" (*Id.* at 611). Pursuant to NY Const., art. VI, §22 (a), the commission "may determine that a judge or justice be admonished, censured or removed from office for cause, including, but not limited to, misconduct in office...and conduct, on or off the bench, prejudicial to the administration of justice ...". In *Nicholson*, the Court considered multiple challenges to a Commission-issued subpoena for testimony and records regarding a complaint concerning solicitation of members of the Bar for a fund raising event. Among those challenges were assertions regarding a claimed violation of the Petitioner's First Amendment associational rights.

Here, as referenced above, the Respondents' opposition and cross-motion to quash are premised upon a claim that the subpoenas are invalid "...in that [they do] not provide any subject matter at issue for this investigation and therefore [are] nothing more than a fishing expedition and

further improperly prevent respondents from proper preparation for testimony sought” (Storm Affirmation, ¶3), and, later, “..respondents are calling into question the validity of the subpoena in that it fails to limit the demand to subject matters at issue in the investigation (¶4). In so arguing, respondents cite to Judiciary Law §42(1) (regarding, in pertinent part, Commission authority to subpoena and compel the attendance of witnesses and require production of documents that it deems relevant or material to an investigation) and §43(2) (regarding Referee appointment and powers to conduct a Hearing, which is not the circumstance herein) as well as, *inter alia*, 22 NYCRR §7000.6(i)(2) and Judiciary Law § 44(4), each of which also reference Hearing process and evidence and therefore appear inapplicable at this investigatory phase. Respondents have asserted no privilege or First Amendment bars to the production of such identified information.

In *New York State Com. on Judicial Conduct v Doe*, 61 NY 2d 56 (1984)<sup>1</sup>, the Court held, *inter alia*, that, while the statutory provisions cited by the Respondents serve, as argued, to prevent “...unlimited and general inquisition into affairs of persons within its jurisdiction solely on the prospect of possible violations of law being discovered...”, the Commission does possess broad subpoena power and subpoenas, to be sustained, require only “...a preliminary showing that the information sought is reasonably related to a proper subject of inquiry” (*Id.* at 60) and that such subpoena power must be “within bounds circumscribed by a reasonable relation to the subject matter under investigation” (*Id.* at 61). In so discussing, the Court clearly embraced the need to prevent unfettered fishing expeditions while recognizing the need for the Commission to have broad authority to conduct investigations into complaints of misconduct. The Court held that the

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<sup>1</sup> *Doe* involved the Commission’s issuance of a subpoena during the investigatory phase of a matter.

Commission, in the course of a good faith investigation, need not “...tailor its request for information to relate precisely to specific allegations contained in the complaints.” (*Id.* at 61), as to hold otherwise would sharply curtail the Commission’s investigatory capabilities thus rendering it ineffective in the discharge of its statutory responsibilities.

Here, the Commission has limited the subpoena solely by date and type of communication; that is, the contested subpoenas (in addition to the testimony of respondents) require the production of, in pertinent part:

“Copies of all emails between smithlaw9@ [REDACTED] and [REDACTED] from June 20, 2022 to the present” and “Copies of all emails between gpeirez@ [REDACTED] and [REDACTED] from June 20, 2022 to the present”

In addition, as referenced above, the Commission has stated on this motion to compel compliance that the investigation involves, *inter alia*, “inappropriate email correspondence”.

In response to the Opposition/Cross Motion, the Commission asserts that the subpoenas are targeted to emails generated during a specific period of time and between specific parties, and are accordingly do not evidence or constitute an unfettered fishing expedition. The Commission references the aforementioned *in camera* submission as setting forth an adequate basis to meet the low bar set for the issuance by the Commission of an investigatory subpoena as set forth in *Doe* and *Nicholson*.

The Respondents have raised no direct objection to the *in camera ex parte* nature of the submission and accordingly, such submission is accepted and relied upon herein. Such process was utilized in *Nicholson v State Com. on Judicial Conduct*, 67 AD2d 649 (1<sup>st</sup> Dept. 1979). As stated in a later appeal on such matter, *Nicholson v State Com. On Judicial Conduct*, 72 AD2d 48 (1<sup>st</sup> Dept.

1979), the Commission was required therein to demonstrate an extant complaint and that the items demanded were relevant to a legitimate investigation. Those standards have been met on the within *in camera ex parte* submission; the area of inquiry, that being the emails between the parties during the referenced period, falls within the Commission's jurisdiction.

On reviewing such information, the Court finds sufficient nexus between the submitted information regarding the basis for the investigation and the subpoenaed information to satisfy the *Nicholson* standard at this stage of the proceedings. While the all encompassing nature of the subpoenaed electronic information would, generally, be considered overbroad, the targeted (by narrow date range and identified party) nature of the subpoenas, along with the submitted information and the nature of the inquiry (that being, as asserted, *inter alia*, alleged inappropriate email communications) are such that the subpoenas are not improper under these circumstances. An "inappropriate email communication" can take place in the context of any subject matter, and the narrowing of the subpoena to include only "inappropriate" communications as defined/identified by Respondents would render such investigations ineffective at best, while a further description of the basis for the subpoena would violate the statutory confidentiality provisions regarding such investigations. Further, Respondents, who are in possession of any subpoenaed information have asserted no privilege in the instant opposition/cross motion.

With regard to the Respondents' claim that they are entitled to notice of the subject matter of the investigation, Petitioners assert that, pursuant to both the Judiciary Law and case law, they are bound to refrain from sharing such information. Judiciary Law Section §45(1) states:

1. Except as hereinafter provided, all complaints, correspondence, commission proceedings and transcripts thereof, other papers and data and records of the commission shall be confidential and shall not be made available to any person

except pursuant to section forty-four of this article. The commission and its designated staff personnel shall have access to confidential material in the performance of their powers and duties. If the judge who is the subject of a complaint so requests in writing, copies of the complaint, the transcripts of hearings by the commission thereon, if any, and the dispositive action of the commission with respect to the complaint, such copies with any reference to the identity of any person who did not participate at any such hearing suitably deleted therefrom, except the subject judge or complainant, shall be made available for inspection and copying to the public, or to any person, agency or body designated by such judge.

Respondents assert that the Judge who is the subject of the investigation has not waived this confidentiality (Tembeckjian Affirmation, ¶20).

Again, Respondents take no issue with the *ex parte in camera* nature of the submission, but require further information regarding the subject of the complaint, both pursuant to 22 NYCRR §7000.6(e), (which, as this is not a Hearing, is not applicable herein) and on the grounds that, as the subpoena requests all emails during the specified times and among the specified parties, and does not in any way limit the subject of the emails to any subject of an identified complaint, the subpoena is overbroad and should be quashed or, at a minimum, limited. Respondents argue that it is incumbent upon Petitioner to respond to this challenge with a demonstration of relevancy (of the material/testimony sought) to the subject matter of the investigation (an argument already dismissed above). Respondents do not quarrel with the requirement that the respondents have a duty to maintain confidentiality. They argue, however, that, having subpoenaed the respondents to be heard on the subject matter of the investigation, the Petitioner cannot now assert that it cannot disclose such subject matter prior to the testimony because it is confidential.

In effect, it appears to the Court that Respondents are asserting both that the subpoenas are deficient for failure to state a subject matter as well as for being a classic "fishing expedition", as the Commission has not identified a subject matter.

The Court finds that the date, manner of communications and party limitations set on the subpoenas as further elucidated by the position of the Commission in support of the instant motion, that is, that the investigation regards complaints that a judge of the Unified Court System engaged in inappropriate email correspondence (Tembeckjian Affirmation, ¶4), are sufficient to provide notice of the substance of the investigation to the subpoenaed parties. Further, as held above, in light of the Affirmations of Mr. Tembeckjian and accompanying documentation, the Court also finds that the Commission has met their low burden of showing that the information sought is reasonably related to a proper subject of inquiry.

While the Court of Appeals has held in *Nicholson* that Sealing is not mandated by Statute, and accordingly that the Appellate Division erred in finding that the statutory confidentiality of the Commission's proceedings could not serve to require Sealing of judicial proceedings, the Court did note therein that in an appropriate case a court may draw on its power to seal its own records. Here, there is no objection from the Respondents to the requested sealing of the record as requested by Petitioner. Nevertheless, the case as presented herein does not demonstrate to the Court any particular deviation from the general facts in *Nicholson* which led to the Court of Appeals' pronouncement on motions for Sealing of Commission matters brought before Court such as the one herein. In light of the permanent nature of any determination by the Court to deny the request for Sealing, however, and the failure of the parties to fully address this issue, the Court will direct further letter-submissions solely on such issue from the parties to be served and filed (again, under Seal) within ten (10) days of the date of the within Decision and Order.

Otherwise, the Court has considered the parties' remaining arguments and finds them either unpersuasive or unnecessary to consider.

The Court, by separate order issued herewith, is sealing this Decision/Order/Judgment at this time, and is retaining all papers filed in this matter for further decision with respect to the sealing of the record.

Therefore, it is hereby

**ORDERED and ADJUDGED** that the petitioner's application is granted to the extent that respondents are directed to appear at the Commission's office at Corning Tower, Suite 2301, Empire State Plaza, Albany, New York, on a date set by the Commission not less than 10 days from the date of this Decision and Order, to give testimony under oath and to produce copies of all emails in their possession for the period June 20 to July 1, 2022 between "gpeirez@[REDACTED]" and "[REDACTED]" and between "smithlaw9@[REDACTED]" and "[REDACTED]"; and it is further

**ORDERED** that respondents' cross-motion to quash is in all respects denied; and it is further

**ORDERED** that the parties are directed submit further letter-submissions, solely on notice, on the issue of whether the entire record should be sealed, to be served and filed (again, under Seal) within ten (10) days of the date of the within Decision and Order; and it is further

**ORDERED** that this Decision/Order/Judgment is sealed pursuant to that certain separate Sealing Order issued herewith and the Court is retaining all papers filed in this matter for further decision with respect to the sealing of the record and all papers filed in this matter remain sealed pending further order of this Court.

This Memorandum constitutes the Decision/Order/Judgment of the Court. This original Decision/Order/Judgment is being returned to the attorney for the Petitioner. A copy of the Decision/Order/Judgment is being delivered to the Albany County Clerk's Office, under seal,

pursuant to the Sealing Order. The underlying papers are being retained by the Court for further submissions concerning the sealing of the record. **The signing of this Decision/Order/Judgment shall not constitute entry or filing under CPLR 2220. Counsel is not relieved from the provision of that rule regarding filing, entry or notice of entry the Albany County Clerk.**

SO ORDERED and ADJUDGED.  
ENTER.

Dated: January 3, 2023  
Albany, New York

  
\_\_\_\_\_  
Gerald W. Connolly  
Acting Supreme Court Justice

Papers Considered:

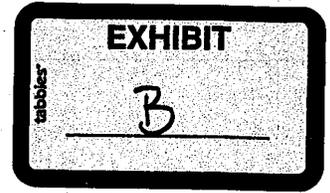
1. Order to Show Cause and Petition to Compel Compliance and Seal this Record dated October 24, 2022; Verified Petition dated October 21, 2022; Affirmation in Support of Order to Show Cause of Robert H. Tembeckjian, dated October 21, 2022, with Exhibits 1-6 annexed thereto; Ex Parte In Camera Affirmation in Support of Motion to Compel of Robert H. Tembeckjian, dated October 21, 2022, with Exhibits A-E annexed thereto;
2. Notice of Cross-Motion dated November 8, 2022; Attorney Affirmation of Michelle A. Storm, dated November 8, 2022; Attorney Affirmation of Shawn Smith, Esq., dated November 8, 2022
3. Affirmation in Reply of Robert H. Tembeckjian dated November 12, 2022; Attorney Affirmation of Shruti Joshi, dated November 14, 2022; and Affidavit of Ryan Fitzpatrick, sworn to November 14, 2022.

**Denise Buckley**

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**From:** SCJC  
**Sent:** Wednesday, January 18, 2023 4:08 PM  
**To:** [REDACTED]@mclclaw.com  
**Cc:** Robert H. Tembeckjian; Denise Buckley; Cathleen S. Cenci; Kathleen Klein  
**Subject:** Letter from the Judicial Conduct Commission  
**Attachments:** 2022A0216.RHT-Storm.WAComplianceLTR.2023-01-18.SAN.pdf

**Importance:** High  
**Sensitivity:** Confidential.



Dear Ms. Storm:

Please see the attached letter.

Thank you.

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**CONFIDENTIAL**

January 18, 2023

Via email: [REDACTED]@mclclaw.com

Michelle A. Storm, Esq.  
Monaco Cooper Lamme & Carr PLLC  
1881 Western Avenue, Suite 200  
Albany, New York 12203  
[REDACTED]@mclclaw.com

Re: *New York State Commission on Judicial Conduct v Peirez and  
Smith, Index No. 8115-22*

Dear Ms. Storm:

This responds to a phone call by Pauline Morris, a paralegal in your office, to Commission Senior Counsel Kathleen Klein, seeking to adjourn tomorrow's appearance of your clients, Messrs. Peirez and Smith, for testimony at the Commission and for their production of subpoenaed emails.

As you are aware, Judge Connolly's Decision and Order of January 3, 2023, requires Messrs. Peirez and Smith to appear at the Commission's office at Corning Tower, Suite 2301, Empire State Plaza, Albany, New York, on a date set by the Commission not less than 10 days from the date of the Decision and Order, to give testimony under oath and to produce copies of all emails in their possession for the period June 20 to July 1, 2022, between "gpeirez@[REDACTED]" and "[REDACTED]" and between "smithlaw9@[REDACTED]" and "[REDACTED]".

*Michelle A. Storm, Esq.*

*January 18, 2023*

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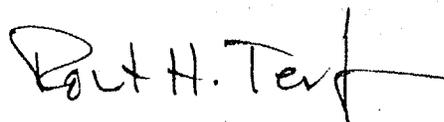
As we indicated to you over the phone on January 11, 2023, and as confirmed in writing the following day, the Commission set January 19, 2023, at 10:00 AM, for your clients to testify and produce the subpoenaed emails, in accordance with the Court's order. It is therefore puzzling that we heard nothing from you about the purported engagements of your clients until Ms. Morris of your office telephoned this afternoon at 1:55 PM, to request the adjournment.

In view of the circumstances, we cannot consent to an adjournment of your clients' testimony unless they each provide us with a sworn, specific statement of actual engagement, by 10:00 AM tomorrow, detailing why they are unable to attend tomorrow. If you also claim an actual engagement, you also are required to submit such a statement of actual engagement, by 10:00 AM tomorrow. If we are provided with their (and, if applicable, your) affirmations of engagement by that deadline, we will adjourn their testimony to January 25, 2023, at 10:00 AM. We will not consent to any additional adjournments.

Please note, **we do not consent to an extension of time for your clients to provide the subpoenaed emails.** Your clients **are not excused** from providing us the subpoenaed emails by 10:00 AM tomorrow, whether in person, by messenger or electronically. We will accept them from you or another representative from your firm on their behalf.

Should your clients fail to comply with the Court's Decision and Order of January 3, 2023, we intend to apply to the Court to hold your clients in contempt.

Very truly yours,



Robert H. Tembeckjian  
Administrator and Counsel