

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,

Petitioner,

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

-against-

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

Respondents.

**AFFIRMATION IN
SUPPORT OF ORDER
TO SHOW CAUSE AND
PETITION TO COMPEL
COMPLIANCE AND
SEAL THIS RECORD**

Index No.:

RJI No.:

ROBERT H. TEMBECKJIAN, 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 the Administrator of 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 make this affirmation in support of the Commission’s petition for an
order and judgment pursuant to CPLR 2308(b) and CPLR 411: (1) directing
Respondents 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 order, to give testimony under oath and to produce copies of all emails in their possession from June 20, 2022, to July 1, 2022, between “gpeirez@[REDACTED]” and [REDACTED] and between “smithlaw9@[REDACTED]” and [REDACTED]; (2) sealing all court records in this proceeding pursuant to 22 NYCRR 216.1; and (3) granting such other and further relief as the Court may deem just and proper.

3. Respondents are the custodians of the emails that are the subject of this motion.

4. As set forth more fully below, the Commission has become aware of the existence of records in Respondents’ possession reasonably related to the Commission’s investigation of complaints against a judge of the Unified Court System (“UCS”), claiming *inter alia* that he engaged in inappropriate email correspondence.

Respondents’ Failure to Comply with a Subpoena

5. Pursuant to Section 44(2) of the Judiciary Law, the Commission has authorized investigation into complaints against a UCS judge, *inter alia* alleging that he engaged in inappropriate email communications.

6. In the course of its investigation, the Commission obtained credible information that Gregory Peirez, Esq., and Shawn Smith, Esq., were party to some

of the communications that are the subject of the Commission's investigation. A copy of the pertinent documentation from the Commission's file is submitted herewith to the Court for *in camera* review.

7. On September 6, 2022, the Commission served a subpoena on Respondent Smith, seeking copies of all emails between "smithlaw9@[REDACTED]" and [REDACTED] from June 20, 2022, to July 1, 2022,¹ and requiring Smith's appearance before the Commission to give testimony under oath. A copy of the subpoena and cover letter is appended as Exhibit 1.

8. On September 16, 2022, the Commission served a subpoena on Respondent Peirez, seeking copies of all emails between "gpeirez@[REDACTED]" and [REDACTED] from June 20, 2022 to July 1, 2022, and requiring Peirez's appearance before the Commission to give testimony under oath. A copy of the subpoena and cover letter is appended as Exhibit 2.

9. The subpoena served on Respondent Smith was made returnable on September 15, 2022, and thereafter was adjourned to October 13, 2022, at 10:00 AM.

10. The subpoena served on Respondent Peirez was made returnable on October 13, 2022, at 2:00 PM.

¹ The subpoenas to Smith and Peirez are each dated July 1, 2022, and each requests emails "from June 20, 2022, to the present."

11. On October 12, 2022, the evening before the return date of the subpoenas, Michelle A. Storm, counsel for the Respondents, emailed a letter to the Commission objecting to the subpoenas. A copy of her correspondence is appended as Exhibit 3.

12. The following day, by letter dated October 13, 2022, the Commission responded to Respondents' objection and adjourned the return date of the subpoenas to October 20, 2022, in a good faith effort to resolve the matter without resort to motion practice. A copy of the Commission's October 13, 2022, correspondence is appended as Exhibit 4.

13. The Commission issued electronic invitations to each Respondent to provide testimony via Zoom on October 20, 2022. Respondents declined the Zoom invitations. Copies of the Respondents' respective declinations are appended as Exhibit 5.

14. By letter emailed to the Commission on the afternoon of October 19, 2022, Respondents' counsel confirmed that her clients did not intend to comply with the subpoenas. A copy of her October 19, 2022, correspondence is appended as Exhibit 6.

15. The return date of the Commission subpoenas has passed, and Respondents have refused to produce the requested emails and to appear and give testimony as required.

The Commission Has Broad Investigatory Powers in Furtherance of the State’s Compelling Interest in Maintaining the Integrity of the Judiciary. A Commission Subpoena Need Only Be Reasonably Related to a Proper Subject of Commission Inquiry.

16. The State has a compelling interest in ensuring the integrity of the judiciary and maintaining public confidence in New York State’s court system. *Nicholson v State Comm’n on Judicial Conduct*, 50 NY2d 597, 607 (1980); *NYS Comm’n on Judicial Conduct v Rubenstein*, 23 NY3d 570, 575 (2017); *Matter of Raab v State Comm’n on Judicial Conduct*, 100 NY2d 305, 312 (2003). The Commission has broad investigatory powers in furtherance of that compelling State interest, and the “Judiciary Law grants the Commission broad access to information in furtherance of its investigatory mandate.” *Rubenstein*, 23 NY3d at 579, 581; *see also Matter of Ayres*, 30 NY3d 59, 62 n3 (2017). The Commission’s authority specifically includes the power “to subpoena witnesses . . . and require the production of any books, records, documents or other evidence that it may deem relevant or material to an investigation.” Judiciary Law Section 42(1).

17. “[A] motion to quash or compel compliance [with a Commission subpoena] raises only the issues of the authority of the investigating body and whether the inquiry falls within the scope of that authority.” *Nicholson*, 50 NY2d at 610 (citations omitted); *see also New York State Commission on Government Integrity v Congel*, 156 AD2d 274 (1st Dept 1989). Thus, to sustain a subpoena, the Commission “need only make a preliminary showing that the information

sought is reasonably related to a proper subject of inquiry.” *NYS Comm’n on Judicial Conduct v Doe*, 91 NY2d 56, 60 (1984) (citing *Nicholson, supra*).

18. The requested records consist of emails between Respondents’ respective [REDACTED] and [REDACTED] accounts and [REDACTED] from June 20, 2022, to July 1, 2022, a period of less than two weeks. The requested emails are directly related to a subject of the Commission’s investigation, which specifically involves emails between Respondents and [REDACTED]. Emails in addition to those the Commission has already obtained are directly relevant and material to the investigation because they will provide the Commission with context to inform its assessment of the judge’s conduct. Thus, the requested records are “reasonably related” to a proper subject of inquiry. *NYS Comm’n on Judicial Conduct v Doe, supra; Nicholson, supra*.

19. Respondents’ objection to the Commission’s subpoenas is premised on the meritless assertion that the Commission’s failure to reveal details to them as witnesses about the claim against the judge in question renders the subpoenas “a fishing expedition and an attempt to engage in unfettered inquiry.” Exhibit 3, p. 3. Not only are Respondents in no position to assess the merits of the Commission’s inquiry, but as mere witnesses they have no right to the Commission’s confidential information under Section 45 of the Judiciary Law, and their claim is baseless on its face. A request for two weeks’ worth of emails to/from two specific individuals

and the judge in question is neither a “fishing expedition” nor an “unfettered inquiry.” Rather, as set forth in my accompanying *in camera* submission, the emails and testimony sought in the subpoenas are directly related to the Commission’s confidential investigation of complaints that allege judicial misconduct.

***In Camera* Review Is Appropriate to Protect the Confidentiality of the Commission’s Investigation.**

20. Providing evidence of the scope of the Commission’s investigation to this Court *in camera* is necessary and appropriate. Revealing details about the claims against the judge in question to these witnesses would violate the Commission’s obligations and the judge’s right to confidentiality under Section 45 of the Judiciary Law. Section 45 requires that “all complaints, correspondence, commission proceedings and transcripts thereof, other papers and date and records of the commission shall be confidential” unless otherwise made public by operation of law, *i.e.* when the Commission renders discipline pursuant to Judiciary Law Section 44(7) or when the judge under inquiry waives confidentiality under Judiciary Law Sections 44(4) or 45. The Commission has not rendered public discipline, and the judge who is the subject of the Commission’s investigation has not waived confidentiality. No other intervening event has transpired to render the Commission’s proceedings public as a matter of law.

Therefore, it would be inappropriate and unfair to release information to Respondents about the complaint that is the subject of the investigation.

21. Moreover, as the Court of Appeals recognized in *Nicholson*, Section 45 also “serve[s] the ... purpose of protecting the confidentiality of complainants and [other] witnesses, thus, ensuring the more effective functioning of the commission.” *Nicholson*. 50 NY2d at 612 n*. A number of courts have ruled that *in camera* review of evidence in support of a subpoena in a confidential investigation is appropriate. *See, e.g., Matter of Levin v. Guest*, 112 AD2d 830, 832 (1st Dept 1985), *aff’d* 67 NY2d 629 (1986), *cert denied* 476 US 1171 (1986); *Guest v. Block*, 134 AD2d 675 (3d Dept 1987); *American Dental Co-op., Inc. v. Attorney General of State of NY*, 127 AD2d 274 (1st Dept 1987).

Public Policy Requires that Respondent Produce the Requested Records and Provide Testimony Under Oath.

22. Public policy requires disclosure of the subpoenaed emails to the Commission and the testimony of these relevant witnesses. 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*, 50 NY2d at 607. Of course, 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).

23. The Court of Appeals has emphasized “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.’” *Rubenstein*, 23 NY3d at 579 (citations omitted). “Continued public confidence in the judiciary is of singular importance, and can be furthered only by permitting the Commission access to information that allows it to quickly identify and respond to judicial misconduct” *Id.* at 581.

24. In every instance in which the Court of Appeals has balanced the Commission’s need for information reasonably related to a misconduct investigation against other important public policy goals, the Court has found the need to protect the integrity of the judiciary to be paramount. *See Rubenstein*, 23 NY3d at 581-82 (“singular importance” of public confidence in the judiciary outweighs “salutary . . . goals” of sealing acquitted defendant’s record); *Stern v Morgenthau*, 62 NY2d at 339 (Commission responsibility to “protect the integrity of the judiciary” “transcend[s]” a Grand Jury’s criminal prosecution); *Nicholson*, 50 NY2d at 608 (chilling effects on First Amendment rights were “far outweighed” by State’s interest in the integrity of the judiciary).

25. *Matter of Rubenstein* is particularly instructive. There, pursuant to Judiciary Law Section 42(3), the Commission sought records of a criminal prosecution that had been sealed pursuant to CPL 160.50 following the defendant’s

acquittal. 23 NY3d at 572-73. The Court of Appeals upheld the Commission’s authority to request and receive the records notwithstanding the fact that they had been sealed under CPL 160.50, and that a request by the Commission was not a CPL-specified exception. *Id.* at 582.

26. In reaching its decision, the Court of Appeals acknowledged “the salutary and protective goals of section 160.50,” including the provision of protections consistent “with the presumption of innocence” to ensure the removal of “any stigma flowing from an accusation of criminal conduct terminated in favor of the accused.” *Rubenstein*, 23 NY3d at 579-80. Nevertheless, the Court held, the Commission’s “broad” investigatory powers under the Judiciary Law entitled the Commission to the sealed records. *Id.* at 579-81. The fact that the Commission’s authority supersedes the sealing provision of CPL 160.50 underscores the strength of the public policy and compels the conclusion that Respondents must comply with the Commission’s subpoenas.

**The Rules of Professional Conduct for Attorneys
Mandate Production of the Requested Emails.**

27. In addition to being obliged to obey a lawful subpoena, the Rules of Professional Conduct for attorneys provide that “[a] lawyer who possesses knowledge or evidence concerning . . . a judge shall not fail to respond to a lawful demand for information from a tribunal or other authority empowered to investigate or act upon such conduct.” RPC 8.3(b); *see also* NY St Bar Assn

Comm on Prof Ethics Op 1099 (2016) (“Rule 8.3[b] imposes a duty to cooperate”).²

28. Because the requested email communications constitute evidence concerning a claim of misconduct against a judge who is the subject of the Commission’s investigation, Respondents’ failure to comply with the Commission’s subpoenas would constitute a breach of their duty under the Rules of Professional Conduct for attorneys.

The Records of this Proceeding Should Be Sealed.

29. Pursuant to Section 45 of the Judiciary Law, “all complaints, correspondence, commission proceedings and transcripts thereof, other papers and date and records of the commission shall be confidential” unless otherwise made public by operation of law, *i.e.*, when the Commission renders discipline pursuant to Judiciary Law Section 44(7) or when the judge under inquiry waives confidentiality under Judiciary Law Sections 44(4) or 45.

30. As of the date of this Affirmation, the Commission is in the process of investigating complaints the judge at issue and has yet to reach a determination as to whether misconduct has occurred or whether public discipline is warranted. The judge who is the subject of the investigation has not waived confidentiality. No

² Available at 2016 WL 4414055

other intervening event has transpired to render the Commission's proceedings public as a matter of law.

31. It would be inappropriate and unfair for information about the complaint against the judge to become public as a result of the Commission's need to enforce two subpoenas for reasons beyond the control of the judge.

32. Under 22 NYCRR 216.1, the Court has the authority to seal its own records upon "a written showing of good cause." The confidentiality of Commission proceedings, as mandated by statute, constitutes the requisite good cause showing to support an order sealing the records of this proceeding.

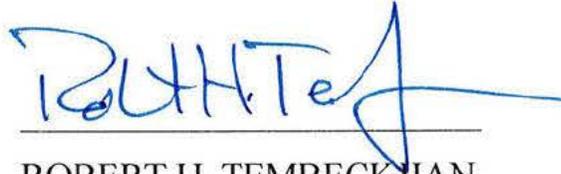
33. In view of the foregoing, the court records of this proceeding should be sealed to preserve the strict confidentiality mandates of Judiciary Law Section 45.

34. No previous application has been made for the relief requested herein.

WHEREFORE, Petitioner respectfully requests that this Court issue an order and judgment pursuant to CPLR 2308(b) and CPLR 411: (1) directing Respondents pursuant to CPLR 2308(b) 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 order, to give testimony under oath and to produce copies of the subpoenaed e-mails; (2) sealing

all court records in this proceeding pursuant to 22 NYCRR 216.1; and (3) granting such other and further relief as the Court may deem just and proper.

Dated: October 21, 2022
Albany, New York



ROBERT H. TEMBECKJIAN
Administrator and 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

Sierra Whitney

From: Commission on Judicial Conduct (Albany)
Sent: Tuesday, September 6, 2022 3:59 PM
To: shawn.smith@[REDACTED]
Cc: Ryan Fitzpatrick; Shruti Joshi
Subject: Letter from the Judicial Conduct Commission
Attachments: 2022A0216.Smith.Subp&VirtualWAProtocolLtr.2022-09-06.SAN.pdf

Importance: High
Sensitivity: Confidential

Dear Mr. Smith:

Please see the attached letter. By “reply” email, please acknowledge receipt of this email and attached letter. Thank you for your cooperation.

New York State **Commission on Judicial Conduct**
Corning Tower, Suite 2301 Empire State Plaza
Albany, New York 12223
518-453-4600 (phone) | 518-299-1757 (fax)
[REDACTED]@cjc.ny.gov | www.cjc.ny.gov



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COMMISSION ON JUDICIAL CONDUCT

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ROBERT H. TEMBECKJIAN
ADMINISTRATOR & COUNSEL

CATHLEEN S. CENCI
DEPUTY ADMINISTRATOR
S. PETER PEDROTTY
KATHLEEN E. KLEIN
SENIOR ATTORNEYS

SHRUTI JOSHI
STAFF ATTORNEY

CONFIDENTIAL

September 6, 2022

By Email: [shawn.smith@\[REDACTED\]](mailto:shawn.smith@[REDACTED])

Shawn J. Smith, Esq.
Delaware County District Attorney's Office
1 Courthouse Square, Suite 5
Delhi, New York 13753

Re: File No. 2022/A-0216

Dear Mr. Smith:

In reference to your upcoming testimony before the Commission at 2:00 PM on September 15, 2022, please be aware that you will be appearing virtually in accordance with the protocols listed below. As per your telephone conversation today with Senior Investigator Ryan Fitzpatrick, please submit to the Commission copies of all emails responsive to the attached subpoena prior to your appearance. The emails may be sent to [\[REDACTED\]@cjc.ny.gov](mailto:[REDACTED]@cjc.ny.gov).

Please note that at this appearance you have the right to be represented by counsel who may appear with you and advise you but may not otherwise take any part in the proceeding, pursuant to Commission Operating Procedures and Rules (22 NYCRR 7000.3[g]). The Commission's Operating Procedures and Rules do not authorize anyone other than counsel to be present with you during your virtual appearance.

1. Video Platform for Virtual Video Appearance

- A. The platform for the virtual video appearance will be Zoom, which facilitates live videoconferencing.
- B. You will appear virtually by using a computer or other electronic device with an internet connection, a camera and a microphone. You are required to be visible on camera at all times during the time of your participation. If, at any point, you are not visible on screen, the proceeding will be paused until such time that you are again visible.
- C. At your request, Commission staff will be available in advance of the date of your scheduled appearance to set up a practice Zoom session and to resolve any technological issues.
- D. The Commission will have IT support staff available (and present) during the entirety of your appearance should any connectivity or other technological issues arise.

2. Your Location

- A. To give virtual testimony before the Commission, you must appear from a private and secure location of your choosing. You must ensure your testimony will be given in a quiet location where no other persons are present or in close enough proximity to overhear the proceedings.
- B. You must have access to an internet-equipped computer or other electronic device with a working microphone and camera, and the Zoom program or application installed, as well a reliable high-speed internet connection.

Shawn J. Smith, Esq.

September 6, 2022

Page 3

- C. In the event of ongoing technical difficulties, or where it appears that your location is not quiet, private or secure, Commission staff may adjourn your testimony and direct you to appear and testify at the Commission's office.
3. Confidentiality
- A. Commission proceedings are confidential pursuant to Judiciary Law §45. Accordingly, you agree not to make any video or audio recordings of, take screen shots or photographs of, or make any kind of transmission to a third party or other electronic device of, any portion of this proceeding.

Thank you for your cooperation and understanding. If you have any questions, feel free to reach out to me or Staff Attorney Shruti Joshi at (518) 453-4600.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Cenci', with a stylized flourish at the end.

Cathleen S. Cenci
Deputy Administrator

Attachment

Subpoena

Confidential

State of New York
Commission on Judicial Conduct
Corning Tower, Suite 2301
Empire State Plaza
Albany, N. Y. 12223

In the Name of the People of the State of New York:

To: Shawn Smith, Esq.

You are hereby commanded to appear and attend before the **NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT**, at Corning Tower, Suite 2301, Empire State Plaza, Albany, NY 12223 on the 15th day of September, 2022, at 2:00 PM, and on any adjourned date thereof, to testify and give evidence as a witness in connection with a proceeding concerning a judge within the state unified court system, conducted pursuant to Sections 42 and 44 of the Judiciary Law.

AND THAT YOU BRING WITH YOU, and produce at the time and place aforesaid, the following books, records and papers now under your control or in your possession or custody:

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

FAILURE TO ATTEND AND PRODUCE the items herein specified may subject you to such penalties and proceedings as are prescribed by law. Penal Law, Section 215.66, as added in 1978, provides as follows:

§215.66 Criminal contempt of the state commission on judicial conduct

A person is guilty of criminal contempt of the state commission on judicial conduct when, having been duly subpoenaed to attend as a witness at an investigation or hearing before the commission or a referee designated by the commission, he fails or refuses to attend without lawful excuse.

Criminal contempt of the state commission on judicial conduct is a class A misdemeanor.

PLEASE BE ADVISED that, pursuant to Article 2-A of the Judiciary Law, these proceedings are confidential. **You are requested to maintain confidentiality.**

Witness: Robert H. Tembeckjian, Administrator of the State Commission on Judicial Conduct.
On the 1st day of July 2022.

By: _____



Administrator



NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT

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KATHLEEN E. KLEIN
SENIOR ATTORNEYS

SHRUTI JOSHI
STAFF ATTORNEY

CONFIDENTIAL

September 16, 2022

Gregory B. Peirez, Esq.
5 Court Street
Norwich, NY 13815

Re: File No. 2022/A-0216

Dear Mr. Peirez:

In reference to your upcoming testimony before the Commission at 2:00 PM on October 13, 2022, please be aware that you will be appearing virtually in accordance with the protocols listed below. As per your telephone conversation today with Senior Investigator Ryan Fitzpatrick, please submit to the Commission copies of all emails responsive to the attached subpoena prior to your appearance. The emails may be sent to [REDACTED]@cjc.ny.gov. Thank you for agreeing to accept service of the subpoena by mail.

Please note that at this appearance you have the right to be represented by counsel who may appear with you and advise you but may not otherwise take any part in the proceeding, pursuant to Commission Operating Procedures and Rules (22 NYCRR 7000.3[g]). The Commission's Operating Procedures and Rules do not authorize anyone other than counsel to be present with you during your virtual appearance.

Gregory B. Peirez, Esq.

September 16, 2022

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- B. You will appear virtually by using a computer or other electronic device with an internet connection, a camera and a microphone. You are required to be visible on camera at all times during the time of your participation. If, at any point, you are not visible on screen, the proceeding will be paused until such time that you are again visible.
- C. At your request, Commission staff will be available in advance of the date of your scheduled appearance to set up a practice Zoom session and to resolve any technological issues.
- D. The Commission will have IT support staff available (and present) during the entirety of your appearance should any connectivity or other technological issues arise.

2. Your Location

- A. To give virtual testimony before the Commission, you must appear from a private and secure location of your choosing. You must ensure your testimony will be given in a quiet location where no other persons are present or in close enough proximity to overhear the proceedings.
- B. You must have access to an internet-equipped computer or other electronic device with a working microphone and camera, and the Zoom program or application installed, as well a reliable high-speed internet connection.

Gregory B. Peirez, Esq.

September 16, 2022

Page 3

C. In the event of ongoing technical difficulties, or where it appears that your location is not quiet, private or secure, Commission staff may adjourn your testimony and direct you to appear and testify at the Commission's office.

3. Confidentiality

A. Commission proceedings are confidential pursuant to Judiciary Law §45. Accordingly, you agree not to make any video or audio recordings of, take screen shots or photographs of, or make any kind of transmission to a third party or other electronic device of, any portion of this proceeding.

Thank you for your cooperation and understanding. If you have any questions, feel free to reach out to me or Staff Attorney Shruti Joshi at (518) 453-4600.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Cenci', with a small horizontal line at the end.

Cathleen S. Cenci
Deputy Administrator

Attachment

Subpoena

Confidential

State of New York
Commission on Judicial Conduct
Corning Tower, Suite 2301
Empire State Plaza
Albany, N. Y. 12223

In the Name of the People of the State of New York:

To: Gregory Peirez, Esq.

You are hereby commanded to appear and attend before the **NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT**, at Corning Tower, Suite 2301, Empire State Plaza, Albany, NY 12223 on the 13th day of October, 2022, at 2:00 PM, and on any adjourned date thereof, to testify and give evidence as a witness in connection with a proceeding concerning a judge within the state unified court system, conducted pursuant to Sections 42 and 44 of the Judiciary Law.

AND THAT YOU BRING WITH YOU, and produce at the time and place aforesaid, the following books, records and papers now under your control or in your possession or custody:

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

FAILURE TO ATTEND AND PRODUCE the items herein specified may subject you to such penalties and proceedings as are prescribed by law. Penal Law, Section 215.66, as added in 1978, provides as follows:

§215.66 Criminal contempt of the state commission on judicial conduct

A person is guilty of criminal contempt of the state commission on judicial conduct when, having been duly subpoenaed to attend as a witness at an investigation or hearing before the commission or a referee designated by the commission, he fails or refuses to attend without lawful excuse.

Criminal contempt of the state commission on judicial conduct is a class A misdemeanor.

PLEASE BE ADVISED that, pursuant to Article 2-A of the Judiciary Law, these proceedings are confidential. **You are requested to maintain confidentiality.**

Witness: Robert H. Tembeckjian, Administrator of the State Commission on Judicial Conduct.
On the 1st day of July 2022.

By: Robert H. Tembeckjian Administrator

EXHIBIT 3

From: [Michelle A. Storm](#)
To: [Commission on Judicial Conduct \(Albany\)](#); [Ryan Fitzpatrick](#); [Shruti Joshi](#)
Subject: 2022/A-0216, 2022/A-0216
Date: Wednesday, October 12, 2022 4:06:35 PM
Attachments: [Peirez Subpoena.pdf](#)
[Smith Subpoena.pdf](#)
[Letter to Judiciary rejecting subpoena.pdf](#)
Importance: High

Hello all,
Please see the attached.
Best,
Michelle



MICHELLE A. STORM

Attorney at Law

DIRECT: [REDACTED]

MAIN: 518-855-3535

EMAIL: [REDACTED]@mclclaw.com

ADDRESS: 1881 Western Avenue, Suite 200, Albany, New York 12203



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October 12, 2022

Michelle A. Storm
Email: [REDACTED]@mclclaw.com
Phone: [REDACTED]

Via Electronic Mail [REDACTED]@cjc.ny.gov)

State of New York
Commission on Judicial Conduct
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

Attn: Senior Investigator Ryan Fitzpatrick [REDACTED]@cjc.ny.gov)

Attn: Shruti Joshi [REDACTED]@cjc.ny.gov)

Re: Gregory B. Peirez, Esq.
Shawn Smith, Esq.
Your File Nos: 2022/A-0216, 2022/A-0216

Dear Mr. Fitzpatrick and Attorney Joshi:

Please be advised that I have been retained by Mr. Smith and Mr. Peirez with regard to the above referenced matter. As you know, both Mr. Smith and Mr. Peirez have been served with a Subpoena as witnesses to an ongoing investigation by the New York State Commission on Judicial Conduct and both non-parties have been scheduled for a deposition tomorrow, October 13, 2022. A copy of said Subpoenas are attached hereto for your reference. Please accept this communication as a rejection to each of the subpoenas referenced above as improper and in a good faith attempt to resolve this dispute absent more formal motion practice under CPLR 2304.

First and foremost, the subpoena issued is improper as it does not provide any subject matter at issue in this investigation. Judiciary Law Section 42(1) only gives the Commission the power to conduct hearings and subpoena witnesses to be examined under oath concerning "evidence that it may deem relevant or material." Similarly, Judiciary Law Section 43(2) authorizes a referee to subpoena witnesses for examination under oath but it too must be regarding evidence that the refer deems "relevant or material to the subject of the hearing." Although 22 NYCRR 7000.6(e) grants the referee reasonable requests for subpoenas, NYCRR

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7000.6(i)(2) states that “at the hearing, the testimony of witnesses may be taken relevant to the formal written complaint.” Consistent with these provision, Judiciary Law Section 44(4) provides that the Commission may only take the testimony of witnesses relevant to the complaint. Questions of relevancy with respect to items sought by subpoenas can only be determined by reference to complaints. Otherwise, the scope of an investigation would be without limits and subpoenas could be utilized as instruments of abuse and harassment. Nicholson v. State Com. On Judicial Conduct, 68 AD 2d 851, 852 (1st Dept. 1979). It is our position that the subpoenas -- as served without limitation -- do exactly what the Appellate Division sought to prevent, abuse and harass my clients.

The issue here is that the subpoena issued on both Mr. Smith and Mr. Peirez does nothing to set forth the subject matter at issue in this investigation, and therefore makes it impossible to comply therewith. In fact, the Commission’s failure to limit the subpoenas in scope based on subject matter is nothing less than a fishing expedition and an attempt to engage in unfettered inquiry. Importantly, the Court of Appeals has recognized that the “materiality and relevancy requirements were included in section 42 of the Judiciary Law to prevent investigatory fishing expeditions.” Matter of New York State Commn. On Jud. Conduct v. Doe, 61 NY 2d 56, 60 (1984). Indeed, the Commission can only exercise its subpoena power “within bounds circumscribed by a reasonable relation to the subjection matter under investigation.” Id.

Where, as is the case here, a subpoena is challenged asserting lack of relevancy it is incumbent upon the issuer to come forward with a factual basis establishing the relevancy to the subject matter of the investigation. Matter of New York City Dept. of Investigation v. Passannate, 148 AD 2d 101, 104 (1989). It is not simply enough that the proponent merely hopes or suspects that relevant information will develop. See Matter of Temporary Comm. Of Investigation of State of N.Y. v. French, 68 AD 2d 681, 691 (1979). Where the proponent of the subpoena fails to establish a factual basis that shows the relevancy to the subject matter of the investigation, the referee issuing the subpoena has exceeded his or her power under Judiciary Law Section 43(2) and Section 44(4) and the subpoena must be quashed. Matter of Morgenthau, 73 AD 3d 415, 419 (1st Dept. 2010). Subpoenaing my clients with the mere hope of developing relevant testimony once on the stand is precisely the kind of investigatory fishing expedition that the law forbids. Id. at 420. As such, we demand that the Commission notify Mr. Smith and Mr. Peirez of the subject matter of the investigation and limit their Subpoena accordingly. A failure to do so violates my clients’ right to privacy, especially considering that they are not a subject to this investigation but merely an assumed “witness.”

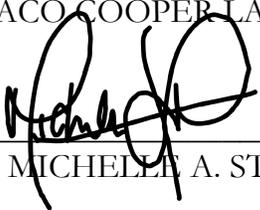
Which leads to the next issue – that it has not been established that Mr. Smith and Mr. Peirez are witnesses to any alleged violation. Because the subject matter of the investigation has not been disclosed to Mr. Peirez and Mr. Smith, it cannot be established that the individuals subpoenaed possessed knowledge or evidence relevant or material to the subject of the hearing as required under Judiciary Law Section 43(2). Here, the parties are not even privy to the subject matter at issue and therefore it cannot be established that they possess any

knowledge or evidence relevant or material to the investigation. Indeed, any information needed pertaining to the alleged misconduct subject to the instant investigation should be available from any complainant.

Based on the foregoing it is respectfully submitted that the Judiciary modify or withdraw their subpoenas as set forth herein above to identify the subject matter of the information sought. Prior to a resolution of this dispute, my clients will not be appearing for a deposition. Please be advised that this a good faith effort to resolve this dispute outside of motion practice, specifically a motion to quash. I look forward to working with you to resolve this matter. Should you have any additional questions, do not hesitate to ask.

Very truly yours,

MONACO COOPER LAMME & CARR, PLLC

By: 

MICHELLE A. STORM

Enc.

CC: Mr. Shawn Smith
Mr. Gregory Peirez



NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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ROBERT H. TEMBECKJIAN
ADMINISTRATOR & COUNSEL

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DEPUTY ADMINISTRATOR

S. PETER PEDROTTY
KATHLEEN E. KLEIN
SENIOR ATTORNEYS

SHRUTI JOSHI
STAFF ATTORNEY

CONFIDENTIAL

September 16, 2022

Gregory B. Peirez, Esq.
5 Court Street
Norwich, NY 13815

Re: File No. 2022/A-0216

Dear Mr. Peirez:

In reference to your upcoming testimony before the Commission at 2:00 PM on October 13, 2022, please be aware that you will be appearing virtually in accordance with the protocols listed below. As per your telephone conversation today with Senior Investigator Ryan Fitzpatrick, please submit to the Commission copies of all emails responsive to the attached subpoena prior to your appearance. The emails may be sent to [REDACTED]@cjc.ny.gov. Thank you for agreeing to accept service of the subpoena by mail.

Please note that at this appearance you have the right to be represented by counsel who may appear with you and advise you but may not otherwise take any part in the proceeding, pursuant to Commission Operating Procedures and Rules (22 NYCRR 7000.3[g]). The Commission's Operating Procedures and Rules do not authorize anyone other than counsel to be present with you during your virtual appearance.

1. Video Platform for Virtual Video Appearance

- A. The platform for the virtual video appearance will be Zoom, which facilitates live videoconferencing.
- B. You will appear virtually by using a computer or other electronic device with an internet connection, a camera and a microphone. You are required to be visible on camera at all times during the time of your participation. If, at any point, you are not visible on screen, the proceeding will be paused until such time that you are again visible.
- C. At your request, Commission staff will be available in advance of the date of your scheduled appearance to set up a practice Zoom session and to resolve any technological issues.
- D. The Commission will have IT support staff available (and present) during the entirety of your appearance should any connectivity or other technological issues arise.

2. Your Location

- A. To give virtual testimony before the Commission, you must appear from a private and secure location of your choosing. You must ensure your testimony will be given in a quiet location where no other persons are present or in close enough proximity to overhear the proceedings.
- B. You must have access to an internet-equipped computer or other electronic device with a working microphone and camera, and the Zoom program or application installed, as well a reliable high-speed internet connection.

Gregory B. Peirez, Esq.

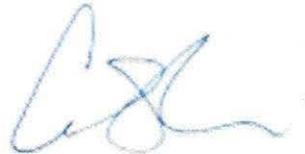
September 16, 2022

Page 3

- C. In the event of ongoing technical difficulties, or where it appears that your location is not quiet, private or secure, Commission staff may adjourn your testimony and direct you to appear and testify at the Commission's office.
3. Confidentiality
- A. Commission proceedings are confidential pursuant to Judiciary Law §45. Accordingly, you agree not to make any video or audio recordings of, take screen shots or photographs of, or make any kind of transmission to a third party or other electronic device of, any portion of this proceeding.

Thank you for your cooperation and understanding. If you have any questions, feel free to reach out to me or Staff Attorney Shruti Joshi at (518) 453-4600.

Very truly yours,



Cathleen S. Cenci
Deputy Administrator

Attachment

Subpoena

Confidential

State of New York
Commission on Judicial Conduct
Corning Tower, Suite 2301
Empire State Plaza
Albany, N. Y. 12223

In the Name of the People of the State of New York:

To: Gregory Peirez, Esq.

You are hereby commanded to appear and attend before the NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT, at Corning Tower, Suite 2301, Empire State Plaza, Albany, NY 12223 on the 13th day of October, 2022, at 2:00 PM, and on any adjourned date thereof, to testify and give evidence as a witness in connection with a proceeding concerning a judge within the state unified court system, conducted pursuant to Sections 42 and 44 of the Judiciary Law.

AND THAT YOU BRING WITH YOU, and produce at the time and place aforesaid, the following books, records and papers now under your control or in your possession or custody:

Copies of all emails between [gpeirez@\[REDACTED\]](mailto:gpeirez@[REDACTED]) and [REDACTED] from June 20, 2022, to the present.

FAILURE TO ATTEND AND PRODUCE the items herein specified may subject you to such penalties and proceedings as are prescribed by law. Penal Law, Section 215.66, as added in 1978, provides as follows:

§215.66 Criminal contempt of the state commission on judicial conduct

A person is guilty of criminal contempt of the state commission on judicial conduct when, having been duly subpoenaed to attend as a witness at an investigation or hearing before the commission or a referee designated by the commission, he fails or refuses to attend without lawful excuse.

Criminal contempt of the state commission on judicial conduct is a class A misdemeanor.

PLEASE BE ADVISED that, pursuant to Article 2-A of the Judiciary Law, these proceedings are confidential. **You are requested to maintain confidentiality.**

Witness: Robert H. Tembeckjian, Administrator of the State Commission on Judicial Conduct.
On the 1st day of July 2022.

By: _____

Robert H. Tembeckjian

Administrator

Subpoena

Confidential

State of New York
Commission on Judicial Conduct
Corning Tower, Suite 2301
Empire State Plaza
Albany, N. Y. 12223

In the Name of the People of the State of New York:

To: Shawn Smith, Esq.

You are hereby commanded to appear and attend before the NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT, at Corning Tower, Suite 2301, Empire State Plaza, Albany, NY 12223 on the 15th day of September, 2022, at 2:00 PM, and on any adjourned date thereof, to testify and give evidence as a witness in connection with a proceeding concerning a judge within the state unified court system, conducted pursuant to Sections 42 and 44 of the Judiciary Law.

AND THAT YOU BRING WITH YOU, and produce at the time and place aforesaid, the following books, records and papers now under your control or in your possession or custody:

Copies of all emails between smithlaw9@ [redacted] and [redacted] from June 20, 2022, to the present. *need to limit to subject matter? sent / received? privileged atty client*

FAILURE TO ATTEND AND PRODUCE the items herein specified may subject you to such penalties and proceedings as are prescribed by law. Penal Law, Section 215.66, as added in 1978, provides as follows:

§215.66 Criminal contempt of the state commission on judicial conduct

A person is guilty of criminal contempt of the state commission on judicial conduct when, having been duly subpoenaed to attend as a witness at an investigation or hearing before the commission or a referee designated by the commission, he fails or refuses to attend without lawful excuse.

Criminal contempt of the state commission on judicial conduct is a class A misdemeanor.

PLEASE BE ADVISED that, pursuant to Article 2-A of the Judiciary Law, these proceedings are confidential. **You are requested to maintain confidentiality.**

Witness: Robert H. Tembeckjian, Administrator of the State Commission on Judicial Conduct.
On the 1st day of July 2022.

By: Robert H. Tembeckjian Administrator



**NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT**

ROBERT H. TEMBECKJIAN
ADMINISTRATOR & COUNSEL

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EDWARD LINDNER
DEPUTY ADMINISTRATOR
FOR LITIGATION

DENISE BUCKLEY
SENIOR LITIGATION COUNSEL

DAVID P. STROMES
LITIGATION COUNSEL

CONFIDENTIAL

October 13, 2022

VIA Electronic Mail: [REDACTED]@mclclaw.com

Michelle A. Storm, Esq.
Attorney at Law
1881 Western Avenue
Suite 200
Albany, New York 12203

Re: File No. 2022/A-0216

Dear Ms. Storm,

I write in response to your October 12, 2022, letter to Shruti Joshi, Esq., objecting to the Commission's subpoenas in the above-referenced matter. For the reasons set forth below, the Commission declines to withdraw the subpoenas.

Your clients have information relevant to a confidential Commission investigation. In furtherance of that investigation, Commission Administrator Robert Tembeckjian issued these subpoenas pursuant to his authority under the Judiciary Law, which "grants the Commission broad access to information in furtherance of its investigatory mandate." *NYS Comm'n on Judicial Conduct v Rubenstein*, 23 NY3d 570, 581 (2017). The Commission's authority specifically includes the power "to subpoena witnesses . . . and require the production of any books, records, documents

Michelle A. Storm, Esq.

*October 13, 2022**Page 2*

or other evidence *that it may deem relevant or material to an investigation.*” Judiciary Law § 42(1) (emphasis supplied).

The Commission is under no obligation to explain to your clients, or to any witness, the factual predicate for its investigation. In fact, we are precluded by statute from doing so. Pursuant to Section 45 of the Judiciary Law, “all complaints, correspondence, commission proceedings and transcripts thereof, other papers and date and records of the commission shall be confidential” unless otherwise made public by operation of law. As the Court of Appeals has held, that provision “serve[s] the dual purpose of protecting the confidentiality of complainants and witnesses, thus, ensuring the more effective functioning of the commission, and of protecting the Judge under investigation from injury to reputation resulting from the exposure of unjustified complaints.” *Nicholson v State Comm’n on Judicial Conduct*, 50 NY2d 597, 612 n* (1980). Therefore, to release information to your clients about the complaint that is the subject of the investigation would be unlawful and unfair.

In the event the validity of our subpoena is challenged, we will provide the Court with appropriate documentation supporting the relevance of your clients’ testimony for *in camera* review. *See Nicholson, supra*.

We note that, in addition to your clients’ obligation to obey a lawful subpoena, the Rules of Professional Conduct for attorneys provide that

[a] lawyer who possesses knowledge or evidence concerning . . . a judge shall not fail to respond to a lawful demand for information from a tribunal or other authority empowered to investigate or act upon such conduct.

RPC 8.3(b); *see also* NY St Bar Assn Comm on Prof Ethics Op 1099 (2016) (“Rule 8.3[b] imposes a duty to cooperate”).¹

¹ Available at 2016 WL 4414055.

Michelle A. Storm, Esq.

October 13, 2022

Page 3

In light of your clients' nonappearance, we have adjourned the return date of the subpoenas to October 20, 2022. In the event your clients do not appear on that date, the Commission will move to compel. Please advise at your earliest convenience how you wish to proceed.

Very truly yours,



Edward Lindner

Deputy Administrator for Litigation

EXHIBIT 5

From: [Michelle A. Storm](#)
To: [Richard M. Keating](#)
Subject: Declined: NYS Commission on Judicial Conduct's Zoom Meeting
Start: Thursday, October 20, 2022 10:00:00 AM
End: Thursday, October 20, 2022 12:00:00 PM
Location: <https://us06web.zoom.us/j/87061057094?pwd=Z3k0TkVwZjdGeFJOMndIQnBKWEVZUT09>

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

From: [Michelle A. Storm](#)
To: [Richard M. Keating](#)
Subject: Declined: NYS Commission on Judicial Conduct's Zoom Meeting
Start: Thursday, October 20, 2022 2:00:00 PM
End: Thursday, October 20, 2022 5:00:00 PM
Location: <https://us06web.zoom.us/j/89328937682?pwd=R1FUU2w4dUJTMWdoSHJjandKckd5QT09>

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Sierra Whitney

From: Commission on Judicial Conduct (Albany)
Sent: Wednesday, October 19, 2022 3:29 PM
To: Letitia Walsh; Sierra Whitney
Subject: FW: Letter from the Judicial Conduct Commission
Attachments: Letter to Judicial Commission re motion to quash.pdf

Sensitivity: Confidential

From: Michelle A. Storm <[REDACTED]@mclclaw.com>
Sent: Wednesday, October 19, 2022 3:25 PM
To: Commission on Judicial Conduct (Albany) <[REDACTED]@cjc.ny.gov>
Cc: Edward Lindner <[REDACTED]@cjc.ny.gov>; Shruti Joshi <[REDACTED]@cjc.ny.gov>; Ryan Fitzpatrick <[REDACTED]@cjc.ny.gov>
Subject: RE: Letter from the Judicial Conduct Commission
Sensitivity: Confidential

Please see the attached.
Best,
Michelle



MICHELLE A. STORM

Attorney at Law

DIRECT: [REDACTED]

MAIN: 518-855-3535

EMAIL: [REDACTED]@mclclaw.com

ADDRESS: 1881 Western Avenue, Suite 200, Albany, New York 12203



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From: Commission on Judicial Conduct (Albany) <[REDACTED]@cjc.ny.gov>
Sent: Thursday, October 13, 2022 4:09 PM
To: Michelle A. Storm <[REDACTED]@mclclaw.com>
Cc: Edward Lindner <[REDACTED]@cjc.ny.gov>; Shruti Joshi <[REDACTED]@cjc.ny.gov>; Ryan Fitzpatrick <[REDACTED]@cjc.ny.gov>
Subject: Letter from the Judicial Conduct Commission
Importance: High
Sensitivity: Confidential

Dear Ms. Storm:

Please see the attached letter. By “reply” email, please acknowledge receipt of this email and attached letter. Thank you for your cooperation.

New York State **Commission on Judicial Conduct**
Corning Tower, Suite 2301 Empire State Plaza
Albany, New York 12223
518-453-4600 (phone) | 518-299-1757 (fax)
[REDACTED] [@cjc.ny.gov](mailto:[REDACTED]@cjc.ny.gov) | www.cjc.ny.gov

PLEASE NOTE: Pursuant to Judiciary Law Section 45, the information contained in this e-mail is PRIVATE AND CONFIDENTIAL and is intended only for the use of the addressee(s) above and others who have been specifically authorized to receive such. If you are not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited by law. If you have received this communication in error, or if any problems occur with this e-mail, please notify us immediately by return e-mail and delete all copies of this message from your system. Thank you.

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October 19, 2022

Michelle A. Storm
Email: [REDACTED]@mclclaw.com
Phone: [REDACTED]

Via Electronic Mail ([REDACTED]@cjc.ny.gov)

State of New York
Commission on Judicial Conduct
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

Attn: Senior Investigator Ryan Fitzpatrick ([REDACTED]@cjc.ny.gov)

Attn: Shruti Joshi ([REDACTED]@cjc.ny.gov)

Re: Gregory B. Peirez, Esq.
Shawn Smith, Esq.
Your File Nos: 2022/A-0216, 2022/A-0216

Dear Mr. Fitzpatrick and Attorney Joshi:

Based upon your correspondence of October 13, 2022 it appears that you do not wish to resolve this dispute with respect to the above mentioned investigation. As such, we will be filing a motion to quash the subpoena. Please reach out if you wish to discuss this matter further. In the meantime, my clients will not be responding to the subpoena as issued.

Very truly yours,

MONACO COOPER LAMME & CARR, PLLC

By: 
MICHELLE A. STORM

Enc.
CC: Mr. Shawn Smith
Mr. Gregory Peirez

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