

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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**ATTORNEY AFFIRMATION**  
**Index No. 8115-22**  
**Hon. Gerald Connolly**

**SHAWN SMITH, ESQ.**, an attorney admitted to practice in the courts of the State of New York and not a party to this action, hereby affirms the following to be true under the penalties of perjury:

1. I am an attorney duly admitted to practice law in the State of New York and am a respondent in the instant action, and as such, I am fully familiar with all the facts, circumstances, and proceedings heretofore had herein as they apply to me.
  2. I submit this affirmation in opposition of petitioner's request for an order pursuant to CPLR 2308(b) and CPLR 411 directing respondents to give testimony and produce copies of all emails in their possession and sealing documents, and in support of respondents cross motion to quash the subpoenas as served, or alternatively order
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petitioners to limit their request by subject matter at issue in this investigation.

3. Petitioner's motion should be denied, and respondents' cross motion granted, because the subpoena as issued is improper in that it does not provide any subject matter at issue for this investigation and therefore is nothing more than a fishing expedition and further improperly prevents your affirment from proper preparation for testimony sought.

4. On the outset it is important to set forth that your affirment is not refusing to cooperate in the pending investigation by the petitioners. I am merely calling into question the validity of the subpoena as issued in that it fails to limit the demand to subject matters at issue in the investigation.

5. At the time I was served with the subpoena (Petitioner's Exhibit 1) and prior to retaining counsel, I engaged in telephone conversations and electronic communications with representatives of the petitioner.

6. In each of these conversations I made it clear to the petitioner that I was not refusing to cooperate with any investigation, or defending [REDACTED]. Rather, I was seeking clarification on the information sought so that I could comply by providing relevant information and so that I could properly prepare for deposition testimony. I also made it clear that I have never appeared in front of [REDACTED] as a judge, but that he was a colleague.

7. Furthermore, I had concerns that engaging in unfettered disclosure would lead the petitioner to engage in further unnecessary and unrestricted demands, i.e. additional subpoenas with more open ended dates of communications and a continued refusal to provide subject matter.

8. In response to my concerns with regard to unfettered disclosure, an

investigator with petitioner stated words to the effect “We will not know if its relevant until we see it, and after we see all emails, we will determine which ones are relevant- if any.” When I questioned this approach, I was contacted by an attorney at the commission who responded that they have unlimited access to subpoena any and all of my emails. After she informed me of this, I conducted legal research and discovered that the Judicial Commission does **not** have the right to subpoena any and all private emails from my account. I provided counsel with my research, including the cases which indicated that the Judicial Commission does have limitations on what is can subpoena from a non-party. I also referenced cases and statutes which directed that the parties should attempt to reach an agreement with regards to the scope of a subpoena prior to seeking judicial intervention. Opposing counsel disagreed with both of these suggestions, and advised that I should retain my own attorney and make a motion to quash if I thought they had anything less than unlimited access to my private email account.

9. To the extent that the petitioner has claimed that I am not acting in accordance with RPC 8.3(b), I respectfully submit to this Court that I am merely calling into question the “lawfulness” of the subpoenas as issued and that I have no intention of undermining any decision of this Court. In short, I intend to comply with any lawful demand for information. In fact, I have provided Attorney Storm with all of the email correspondence sought by the subpoena, and have authorized her to disclose it if this Honorable Court so orders. However, I am unclear as to why I would be deposed. Any emails would clearly speak for themselves.

10. As such, respondents respectfully request that this Court require the

Commission notify respondents as to the subject matter of the investigation and limit their Subpoena accordingly.

**WHEREFORE**, respondents, Peirez and Smith, respectfully request an Order denying petitioners' motion to compel and granting their motion to quash the subpoenas as served, or alternatively order petitioners to limit their request by subject matter at issue in this investigation, with costs, together with such other and further relief as the Court may see just and proper.

Dated: November 8, 2022  
Grand Gorge, New York

By:   
SHAWN SMITH, ESQ.