

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,

**VERIFIED
PETITION**

Petitioner,

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

-against-

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

Respondents.

PETITIONER, by its Administrator, ROBERT H. TEMBECKJIAN,
respectfully alleges upon information and belief, as follows:

1. Petitioner is the New York State Commission on Judicial
Conduct (“Commission”), an agency of the State of New York established
pursuant to Article VI, Section 22, of the of the New York State
Constitution. The Commission is responsible for receiving, initiating and
investigating complaints of judicial misconduct and, where appropriate, for
disciplining judges within the state Unified Court System (“UCS”).

2. At all times hereinafter mentioned, Petitioner's principal place of business was and is 61 Broadway, Suite 1200, New York, New York 10006. The Commission also has offices in Albany, New York, and Rochester, New York.

3. At all times hereinafter mentioned, Respondents Gregory Peirez, Esq., and Shawn Smith, Esq., are the custodians of records that are the subject of a subpoena issued pursuant to Section 42(1) of the Judiciary Law in connection with the Commission's investigation into complaints against a judge of the UCS claiming that the judge engaged in inappropriate email communications.

4. The Commission is attempting to determine whether the judge has violated the Rules Governing Judicial Conduct, promulgated by the Chief Administrative Judge on approval of the Court of Appeals.

5. This Petition is accompanied by an Affirmation of Robert H. Tembeckjian in support of the instant Petition ("Tembeckjian Aff.") and a second Affirmation of Robert H. Tembeckjian appending confidential records for review by the court *in camera*.

Respondent's Failure to Comply with a Subpoena

6. Pursuant to Section 44(2) of the Judiciary Law, the Commission has authorized investigation into complaints against a UCS

judge alleging *inter alia* that the judge engaged in inappropriate email communications.

7. 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 email communications that are a subject of the Commission's investigation.

8. 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, and requiring Smith's appearance before the Commission to give testimony under oath. Copies of the subpoena and cover letter are appended to the Tembeckjian Aff. as Exhibit 1.

9. 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. Copies of the subpoena and cover letter are appended to the Tembeckjian Aff. as Exhibit 2.

10. 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.

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

12. On October 12, 2022, the evening before the return date of the subpoenas, counsel for the Respondents emailed a letter to the Commission objecting to the Commission's subpoenas. A copy of counsel's correspondence is appended to the Tembeckjian Aff. as Exhibit 3.

13. 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 to the Tembeckjian Aff. as Exhibit 4.

14. 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 to the Tembeckjian Aff. as Exhibit 5.

15. 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 counsel's October 19, 2022, correspondence is appended to the Tembeckjian Aff. as Exhibit 6.

16. 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.

17. In view of the foregoing, and for the reasons set forth in the accompanying Tembeckjian Aff., the Commission seeks an Order to compel Respondents' compliance with the Commission's subpoenas.

The Records of this Proceeding Should Be Sealed.

18. Pursuant to Section 45 of the Judiciary Law, "all complaints, correspondence, commission proceedings and transcripts thereof, other papers and data 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.

19. As of the date of this Affirmation, the Commission is in the process of investigating 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 other intervening event has transpired to render the Commission's proceedings public as a matter of law.

20. 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.

21. 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.

22. 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.

***In Camera* Review is Appropriate to Protect the Commission's Confidential Investigation.**

23. Providing evidence of the scope of the Commission's investigation to this Court *in camera* is necessary and appropriate. Revealing details about the claim 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.

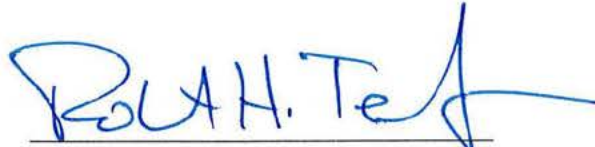
22. Moreover, as the Court of Appeals recognized in *Nicholson v. State Comm'n on Judicial Conduct*, 50 NY2d 597, 612 n* (1980), Section 45 also "serve[s] the . . . purpose of protecting the confidentiality of complainants and [other] witnesses, thus, ensuring the more effective functioning of the commission." 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).

24. 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 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]; (ii) sealing all court records in this proceeding pursuant to 22 NYCRR 216.1; and (iii) 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

VERIFICATION

Robert H. Tembeckjian, an attorney admitted to practice in the courts of the State of New York, affirms the following to be true under penalties of perjury pursuant to CPLR 2106:

I am the Administrator of the New York State Commission on Judicial Conduct, Petitioner in this matter. I am acquainted with the proceedings to date. I have personally examined the attached Petition and the accompanying Affirmations and exhibits annexed thereto.

I have read the foregoing Petition. The same is true to my knowledge, except as to those matters alleged upon information and belief, and as to those matters, I believe them to be true.

I make this verification pursuant to CPLR Section 3020(d)(2), because the Petitioner is an agency of the State of New York, and I am acquainted with the facts of this proceeding.

Dated: Albany, New York
October 21, 2022



ROBERT H. TEMBECKJIAN