

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,

**ATTORNEY  
AFFIRMATION**

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Petitioner,

Index No.: 8115-22

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

-against-

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

Respondents,

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RECEIVED  
ALBANY COUNTY CLERK  
2023 JAN 20 PM 3:49

**KATHLEEN E. KLEIN**, 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 Attorney employed by the New York State Commission on Judicial Conduct ("Commission"). I am the attorney assigned to the Commission's investigation underlying the subpoenas that are the subject of the above-captioned matter, 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 Respondents Gregory Peirez, Esq., and Shawn Smith, Esq., for failing to comply with the Court's Decision/Order/Judgment dated January 3, 2023, which required them to appear at the Commission's Albany office to produce email records and provide testimony on a date set by the Commission.

3. As set forth in the accompanying Affirmation of Denise Buckley ("Buckley Aff."), this Court issued a Decision and Order dated January 3, 2023, directing 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]'" See Buckley Aff., Exhibit ("Ex.") A, Decision and Order at p.9.

4. On the afternoon of January 11, 2023, I participated in a conference call initiated by Senior Litigation Counsel Denise Buckley, who contacted attorney Michelle A. Storm of Monaco Cooper Lamme & Carr, PLLC, Respondents' counsel, in response to Ms. Storm's inquiry about the scheduling of her clients' testimony and production of emails.

5. Due to difficulty with the connection, I was unable to clearly hear Ms. Storm's portion of the conversation and advised, through Ms. Buckley, that I would contact Ms. Storm directly.

6. At the conclusion of the conference call, and within the hour, I telephoned Ms. Storm at her office phone number [REDACTED] to introduce myself and advise that the Commission was setting January 19, 2023, for Respondents' testimony and production of emails.

7. When I advised Ms. Storm that the Commission was not inclined to grant an adjournment, she indicated she expected to be extended the "professional courtesy" to allow for an adjournment if necessary. When asked if she had a conflicting appearance on the proposed date, she did not provide a definitive answer. Ms. Storm stated she would check with her clients as to their availability, noting that Mr. Smith had been appointed "Acting District Attorney."

8. Having heard nothing further from Ms. Storm, the Commission sent a letter to Ms. Storm on January 12, via email to [REDACTED]@mclclaw.com, and via U.S. Mail to her firm, Monaco Cooper Lamme & Carr, PLLC at 1881 Western Avenue, Suite 200, Albany, NY 12203, confirming that the testimony of Shawn Smitha and George Peirez, along with the production of the subpoenaed emails, was scheduled to proceed at the Commission's Albany office on January 19, 2023, at 10:00 AM, and requesting that she confirm the appearance of her clients. A

copy of the letter is attached hereto as **Ex. A.**

9. Ms. Storm did not confirm the appearance of her clients, nor did she acknowledge receipt of my email or the letter, though our office received a “read receipt” indicating that she received and opened the email on January 12, 2023.<sup>1</sup> A copy of the read receipt is attached hereto as **Ex. B.**

10. Ms. Storm did not follow up with me or anyone at the Commission regarding her clients’ availability to appear on January 19 until approximately 2:00 PM on January 18, when Pauline Morris, a paralegal from Ms. Storm’s firm, phoned me and requested an adjournment. Ms. Morris did not suggest an adjourned date, but rather indicated that Respondents would be willing to reschedule within the next two weeks.

11. When I asked why Respondents were requesting an adjournment, Ms. Morris stated that Shawn Smith was scheduled to be engaged in a Grand Jury proceeding and Gregory Peirez was scheduled to be engaged in a trial.

12. In response, I asked to speak with Ms. Storm, but Ms. Morris told me that Ms. Storm was unable to speak with me because she was engaged in a

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<sup>1</sup> As reflected by the heading of the email at Exhibit A, the Commission’s email was sent to Ms. Storm on January 12, 2023, at 11:16 AM. As reflected by the heading of the email at Exhibit B, the Commission received an email at 11:42 AM that same day indicating that its email to Ms. Storm had been opened. Due to a technical issue of unknown origin, the body of the email at Exhibit B lists the time-stamps for Monrovia, Reykjavik instead of Eastern Standard Time.

deposition.

13. I advised Ms. Morris that I was not authorized to grant her request for an adjournment but would speak with senior-most officials at the Commission and get back to Ms. Storm. Promptly thereafter I spoke about this matter with Commission Administrator Robert H. Tembeckjian, among others.

14. At approximately 4:08 PM that same day, Mr. Tembeckjian wrote to Ms. Storm on behalf of the Commission, indicating that in view of Respondents' eleventh-hour request for an adjournment, communicated via a paralegal at Ms. Storm's office, the Commission would adjourn the testimony of Mr. Peirez and Mr. Smith to January 25, 2023, on the condition that each Respondent furnish the Commission with a sworn statement of engagement by 10:00 AM on January 19, 2023. The Commission requested a similar statement from Ms. Storm in the event that she, too, claimed to be otherwise engaged. A copy of the letter, along with the email to Ms. Storm attaching the letter, is attached to Ms. Buckley's Affirmation as **Ex. B.**


15. As also set forth in the letter, in bold type, the Commission made clear that it was not consenting to their late request to adjourn the email production. The date and time set for email production – January 19 at 10:00 AM – remained in place, and could be satisfied by delivery “in person, by messenger or electronically.” *Id.*

16. I then called Ms. Morris and advised her that the Commission had emailed to Ms. Storm a letter formally responding to her request for an adjournment. I asked Ms. Morris for her email address so that I could forward the Commission's letter to her as well.

17. Upon obtaining Ms. Morris' email address, I forwarded the email attaching the letter to Ms. Morris at 4:14 PM on January 18 to ensure its receipt. A copy of my email is attached hereto as **Ex. C**.

18. There has been no appearance at Commission Offices by Mr. Smith, Mr. Peirez or Ms. Storm. The subpoenaed documents have not been produced. And neither Smith, Peirez nor Storm has submitted any statement of engagement.

Dated: January 20, 2023  
Albany, New York



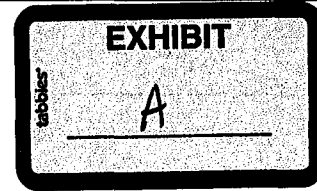
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Kathleen E. Klein, Senior Attorney  
New York State Commission on Judicial Conduct  
Empire State Plaza, Corning Tower, Suite 2301  
Albany, New York 12223

**Sierra Whitney**

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**From:** Commission on Judicial Conduct (Albany)  
**Sent:** Thursday, January 12, 2023 11:16 AM  
**To:** [REDACTED]@mclclaw.com  
**Cc:** Kathleen Klein  
**Subject:** Letter from the Judicial Conduct Commission  
**Attachments:** 2022A0216.Klein-Storm.WA.2023-01-12.SAN.pdf



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

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Ms. Storm:

Please see the attached letter. The same will follow via US mail to your office address. 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)  
[alb@cjc.ny.gov](mailto:alb@cjc.ny.gov) | [www.cjc.ny.gov](http://www.cjc.ny.gov)



NEW YORK STATE  
COMMISSION ON JUDICIAL CONDUCT

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TAA GRAYS, VICE CHAIR  
HON. FERNANDO M. CAMACHO  
JODIE CORNGOLD  
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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**

January 12, 2023

VIA Electronic Mail: [REDACTED]@mclclaw.com and USPS

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

*Re: File No. 2022/A-0216*

Dear Ms. Storm:

In follow-up to our telephone conversation yesterday, and pursuant to Judge Connolly's Decision/Order/Judgment dated January 3, 2023, the testimony of Shawn Smith and Gregory Peirez, and the production of the subpoenaed emails, are scheduled to proceed on **January 19, 2023, beginning at 10:00 AM**, at the Commission's office in Albany at Corning Tower, Suite 2301, located at the Empire State Plaza. Directions are enclosed. The witnesses will testify separately.

Please note Section 7000.3(g) of the Commission's Operating Procedures and Rules (22 NYCRR 7000.3[g]), which provides: "A witness required to appear before the commission shall have the right to be represented by counsel who may be present with the witness and may advise the witness but may not otherwise take any part in the proceeding."



NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT

*Michelle A. Storm, Esq*

*January 12, 2023*

*Page 2*

I will be representing the Commission in connection with this matter.  
Please confirm that your clients will appear on January 19, 2023.

Very truly yours,

*Kathleen E. Klein*

Kathleen E. Klein  
Senior Attorney

Enclosure

**DIRECTIONS TO COMMISSION ON JUDICIAL CONDUCT, ALBANY OFFICE  
(Located on 23rd Floor, Corning Tower, Empire State Plaza)**

**From the North:** Take Interstate 1-87 (Northway) to Interstate 1-90 East (Exit# 1E). Take Interstate 1-90 East to Interstate 787 South. Take Exit #3A for the Empire State Plaza.

**From the South:** Take New York State Thruway (Interstate 87) to Exit 23-straight through Toll Booth to Interstate 787. Take Exit #3 for the Empire State Plaza.

**From the East:** Take Interstate 90 West to exit #B 1 (1-90). Continue on 1-90 to Interstate 787 South. Follow I-787 South to Exit #3A for the Empire State Plaza.

**From the West:** Take New York State Thruway (Interstate 90) to Exit 24 (Albany). Proceed east on Interstate 90 to Interstate 787 South. Take Exit #3A for the Empire State Plaza.

**PARKING**

See <https://empirestateplaza.ny.gov/parking> for available parking lots and fees. Note card only payment (no cash).

Attached are maps of the Empire State Plaza.

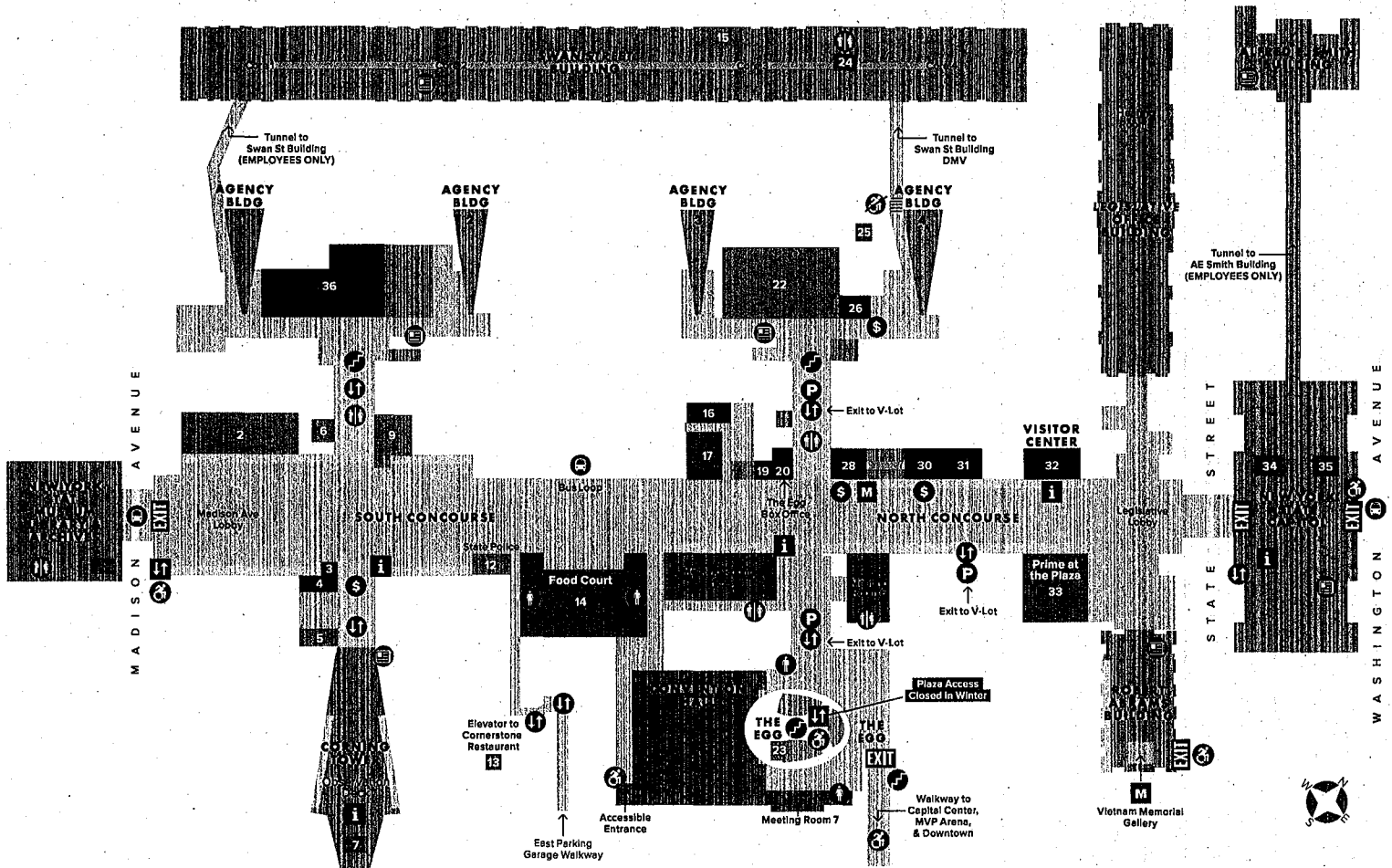
Please note that you will need a photo ID for parking and to enter the Corning Tower building.

Report to the guard's desk, located just before the entrance to Corning Tower on the Concourse Level, to obtain a visitor's pass. Take the second bank of elevators to the 23rd floor. Upon exiting the elevator, press the button located to the right of the glass doors.

# WELCOME TO THE EMPIRE STATE PLAZA

empirestateplaza.ny.gov @ f

## CONCOURSE LEVEL



### Map Key

- i** Information
- \$** ATM
- ⤴** Exit to Plaza
- ⬆** Elevator
- ⬆** Elevator to Plaza Level **♿** Accessible
- P** Parking (use elevators)
- ♿** CDTA Bus Stop
- 📰** Newsstand Convenience Store
- M** Memorials  
Martin Luther King, Jr. Memorial  
Vietnam Memorial Gallery
- 🖼️** Empire State Plaza Art Collection

### Food

- 7** B-Rads Executive Bistro  
ID or Visitor Pass required
- 13** Cornerstone at the Plaza  
Plaza Level
- 14** Food Court  
Au Bon Pain | Auntee Anne's | Bombers  
Honest Weight | Kuma Ani | McDonald's  
PBD Kitchen | Pho Yum
- 17** Logan's Deli and Market
- 24** Swan Street Cafeteria  
WV Pizza
- 25** B-Rad's Express  
Plaza Level
- 33** Prime at the Plaza Café
- 34** Dunkin' Donuts

### Services

- 3** Just Jewelry Repair
- 4** Post Office
- 16** American Red Cross
- 19** Patsy's Barber Shop
- 20** The Egg Box Office
- 26** Emblem Health Family Dental
- 28** KeyBank
- 30** SEFCU
- 31** SUNY Administration
- 32** Visitor Center & Gift Shop
- 35** Post Office
- 36** Retro Fitness

### State Offices

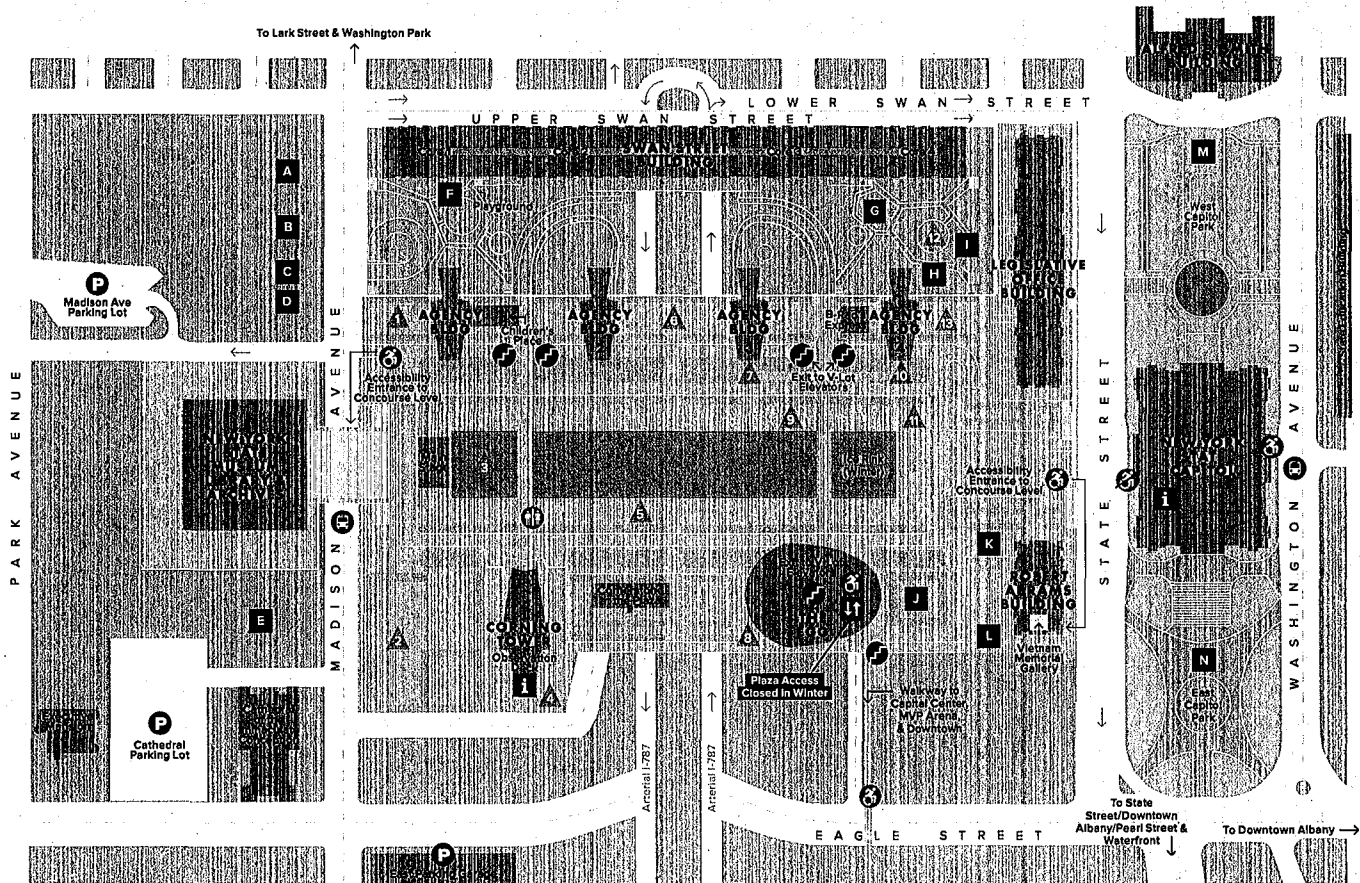
- 2** Media Services Room #146
- 5** Conference Room #125
- 6** Parking Management  
Room #144
- 9** Plaza Operations Room #130
- 12** NY State Police Room #115-1
- 15** Department of Motor Vehicles
- 22** Convention & Cultural Events,  
Curatorial Services Room #120
- 23** Convention Center Office

# WELCOME TO THE EMPIRE STATE PLAZA

empirestateplaza.ny.gov @ f

## PLAZA LEVEL

To Lark Street & Washington Park



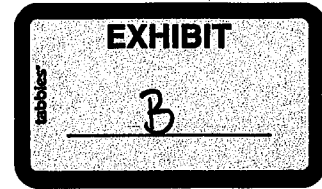
**i** Information   **Li** Elevator to Concourse   **f** Exit to Concourse   **P** Parking   **CDTA** Bus Stop   **→** One Way Street

### **▲** Governor Nelson A. Rockefeller Empire State Plaza Art Collection

- 1 **Forrest Myers**, *Untitled*, 1969-70
- 2 **Francois Stahly**, *Labyrinth*, 1970-71
- 3 **Alexander Calder**, *Triangles and Arches*, 1965
- 4 **James Rosati**, *Lippincott I*, 1967
- 5 **George Sugarman**, *Trio*, 1969-71
- 6 **Clement Meadmore**, *Verge*, 1971-72
- 7 **Ellsworth Kelly**, *Yellow Blue*, 1968
- 8 **Antoni Milkowski**, *Salem 7, 1/3*, 1965-67
- 9 **George Rickey**, *Two Lines Oblique*, 1968-71
- 10 **Claes Oldenburg**, *Geometric Mouse, Scale A, 1/6*, 1969
- 11 **Ronald Bladen**, *The Cathedral Evening*, 1972
- 12 **Julius Schmidt**, *Untitled*, 1966
- 13 **Lyman Klipp**, *Wild Rice*, 1967

### **■** Memorials

- |                                       |   |
|---------------------------------------|---|
| A Missing Person Remembrance          | L Vietnam Memorial                        |
| B Korean Veterans Memorial            | M George Washington Memorial              |
| C Women Veterans Memorial             | N General Phillip Henry Sheridan Memorial |
| D Purple Hearth Memorial              |   |
| E WWII Memorial                       |   |
| F Children's Memorial                 |   |
| G Police Officers Memorial            |   |
| H Parole Officers Memorial            |   |
| I Crime Victims Memorial              |   |
| J Fallen Firefighters Memorial        |   |
| K Emergency Medical Services Memorial |   |



**From:** [Michelle A. Storm](#)  
**To:** [Commission on Judicial Conduct \(Albany\)](#)  
**Subject:** Read: Letter from the Judicial Conduct Commission  
**Date:** Thursday, January 12, 2023 11:42:02 AM  
**Importance:** High

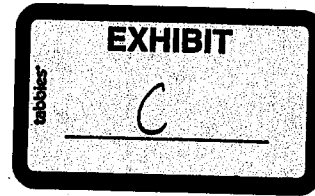
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Your message

.To:  
Subject: Letter from the Judicial Conduct Commission  
Sent: Thursday, January 12, 2023 4:42:01 PM (UTC+00:00) Monrovia, Reykjavik  
was read on Thursday, January 12, 2023 4:41:53 PM (UTC+00:00) Monrovia, Reykjavik.

**From:** Kathleen Klein  
**To:** [REDACTED]@mclclaw.com  
**Subject:** FW: Letter from the Judicial Conduct Commission  
**Date:** Wednesday, January 18, 2023 4:14:00 PM  
**Attachments:** 2022A0216.RHT-Storm.WAComplianceLTR.2023-01-18.SAN.pdf  
**Importance:** High  
**Sensitivity:** Confidential

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Dear Ms. Morris:

Please see the attached letter.

Thank you.

**Kathleen E. Klein** | Senior Attorney  
New York State **Commission on Judicial Conduct**  
Corning Tower, Suite 2301 Empire State Plaza  
Albany, New York 12223  
**518-453-4600** (phone) | 518-486-1850 (fax)  
[REDACTED]@cjc.ny.gov | [www.cjc.ny.gov](http://www.cjc.ny.gov)

---

**From:** SCJC <cjc@cjc.ny.gov>  
**Sent:** Wednesday, January 18, 2023 4:08 PM  
**To:** [REDACTED]@mclclaw.com  
**Cc:** Robert H. Tembeckjian <[REDACTED]@cjc.ny.gov>; Denise Buckley <[REDACTED]@cjc.ny.gov>;  
Cathleen S. Cenci <[REDACTED]@cjc.ny.gov>; Kathleen Klein <[REDACTED]@cjc.ny.gov>  
**Subject:** Letter from the Judicial Conduct Commission  
**Importance:** High  
**Sensitivity:** Confidential

Dear Ms. Storm:

Please see the attached letter.

Thank you.

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.



NEW YORK STATE  
COMMISSION ON JUDICIAL CONDUCT

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ADMINISTRATOR & COUNSEL

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DENISE BUCKLEY  
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DAVID P. STROMES  
LITIGATION COUNSEL

**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*

*Page 2*

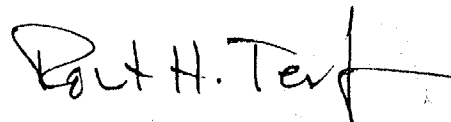
As we indicated to you over the phone on January 11, 2023, and as confirmed in writing the following day, the Commission set January 19, 2023, at 10:00 AM, for your clients to testify and produce the subpoenaed emails, in accordance with the Court's order. It is therefore puzzling that we heard nothing 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