

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 11

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In the Matter of the Application of
MARIAN R. SHELTON,

INDEX NO. 118283/06

Petitioner,

For a Judgment under Article 78 of the Civil
Practice Law and Rules §7803(2)

-against-

NEW YORK STATE COMMISSION ON
JUDICIAL CONDUCT,

Respondent.
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JOAN A. MADDEN, J.:

In this Article 78 proceeding, petitioner Marian R. Shelton, Judge of the Family Court of the State of New York, seeks a judgment pursuant to CPLR 7803(2) declaring that respondent New York State Commission on Judicial Conduct (the "Commission") is proceeding in excess of its jurisdiction in connection with its investigation of certain matters regarding Judge Shelton. Petitioner also seeks an order enjoining the Commission from continuing with its investigations. Specifically, petitioner challenges certain aspects of the investigation where she alleges the Commission has inquired about conduct in the absence of either a signed complaint or a complaint specific to such conduct, and that the subject matter of certain complaints involving internal court administration and operations, is outside the Commission's jurisdiction. Petitioner also challenges other aspects of the investigation into conduct relating to two matters on the grounds that they involve cases pending before her, and that certain complaints are from

organizations biased against her, and that in certain instances the Commission has not been neutral and impartial. Petitioner further seeks an order pursuant to section 216.1 of the Uniform Rules for the Trial Courts of the State of New York, sealing all documents in and related to this proceeding.

The complaints before the Commission, with one exception, involve allegations that in certain Family Court proceedings, petitioner was disrespectful, discourteous or made disparaging remarks to litigants, attorneys, judges, court officers or others who appeared before her. The complaints allege, *inter alia*, that petitioner made disparaging remarks about the credibility of PH, a litigant in a paternity proceeding¹; the mental health of litigants RM, a party to a family offense petition and DS, a litigant in a custody case, and the law guardian in the PH proceeding; the appearance of DS; the morality of FB, a litigant in a paternity proceeding; and the accent of an attorney associated with the Legal Aid Society who petitioner allegedly ordered to leave her courtroom on baseless grounds. The remaining complaints involve similar conduct and allege that petitioner was rude and demeaning in her interaction with court officers, was discourteous in the courtroom to two fellow judges and held the spouse of a court clerk in contempt. The final complaint alleges that petitioner refused to preside in the intake part due to the reassignment of a court officer from her courtroom. In addition to the foregoing complaints, by letter dated October 31, 2006, the Commission informed petitioner that it intended to inquire about two additional matters reflected in the transcripts of Family Court proceedings involving two litigants, "S" and "R".

¹As these are Family Court proceedings, the names of the individuals involved have been redacted in the record and are reflected by initials.

Petitioner challenges the investigation as to the law guardian, the attorney, the court officers, the matter involving FB, and those based on the S and R transcripts, on the ground that no complaints were signed by the individual litigants, law guardian, attorney or individual court officers. Additionally, petitioner challenges the Commission's jurisdiction regarding the court officers, alleging that court officers are not encompassed within the purview of Canon 3 of the Code of Judicial Conduct and section 100.3(B)(3) of the Rules Governing Judicial Conduct, which require a judge to be "patient, dignified and courteous" to those she "deals with in an official capacity." Code of Judicial Conduct, Cannon 3(B)(3); 22 NYCRR §100.3(B)(3).

Petitioner also challenges the complaints involving the court officers, her fellow judges and her failure to fulfill an assignment on the ground that these relate to matters of internal court administration which are not within the ambit of the Commission's jurisdiction. Regarding the FB complaint and the matter involving the S transcript, petitioner argues that they involves cases pending before her, which should not be considered by the Commission as it encroaches on the independence of the judiciary.

In opposing the petition, the Commission asserts that the investigation of petitioner is within the scope of its jurisdiction set forth in Article 6, Section 22(a) of the New York State Constitution and Article 2-A of the Judiciary Law. Specifically, the Commission argues that the complaints at issue in this proceeding allege similar acts of judicial misconduct consisting of judicial intemperance or the failure to perform official duties, which fall directly within the Commission's explicitly mandated constitutional authority to investigate. The Commission also argues that it is authorized to investigate the matters alleged in the complaints, and in the S and R

transcripts, since once an investigation is initiated by a complaint or an administrator's complaint, during the investigatory stage, its investigation, including questioning petitioner, need not be limited to the allegations in the complaints, but can include matters reasonably related to the subject matter of the complaints. The Commission further argues that petitioner has waived her right to make certain objections by testifying before the Commission, that the Commission is not prohibited from investigating matters pertaining to internal court administration, and that the Commission has exercised its investigatory authority in a neutral and impartial manner.

The relief petitioner seeks is in the nature of prohibition which is appropriate only "when there is a clear legal right" and only when the body or officer "acts or threatens to act without jurisdiction in a matter over which it has no power over the subject matter or where it exceeds its authorized power." Matter of Nicholson v. State Commission on Judicial Conduct, 50 NY2d 597, 605-606 (1980). The Commission's jurisdiction is based on Article 6, Section 22(a) of the New York State Constitution which provides:

The commission [the New York State Commission on Judicial Conduct] shall receive, initiate, investigate and hear complaints with respect to the conduct, qualifications, fitness to perform or performance of official duties of any judge or justice of the unified court system . . . and may determine that a judge or justice be admonished, censured or removed from office for cause, including, but not limited to, misconduct in office, persistent failure to perform his duties, habitual intemperance, and conduct, on or off the bench, prejudicial for the administration of justice.

"The Judiciary Law implements the constitutional authorization and establishes the commission, granting it broad investigatory and enforcement powers." Matter of Nicholson v State Commission on Judicial Conduct, supra at 610. Judiciary Law §44(1) provides that the Commission "shall receive, initiate, investigate and hear complaints with respect to the conduct,

qualifications, fitness to perform, or performance of official duties of any judge . . . including, but not limited to, misconduct in office, persistent failure to perform his duties, habitual intemperance and conduct, on or off the bench, prejudicial for the administration of justice.”

The Judiciary Law provides that the Commission may initiate an investigation of a judge’s conduct based on the receipt of a written complaint, Judiciary Law §44(1),² or it may initiate an investigation on its own motion upon the filing an administrator’s complaint, that is, a written complaint signed by the administrator, which serves as the basis for the investigation, Judiciary Law §44(2).³ Thus, “[t]he Legislature . . . circumscribed the investigatory powers of the commission by requiring, as a prerequisite to initiating an investigation, that it either receive a complaint from a citizen (Judiciary Law, §44, subd. 1) or file a complaint on its own motion (Judiciary Law, §44, subd. 2).” Matter of Going, 97 NY2d 121, 124 (2001)(quoting Matter of New York State Commission on Judicial Conduct v. Doe, 61 NY2d 56, 60 [1984]).

The statutory framework provides that during an investigation, the Commission may require the judge to appear before it and requires the Commission to serve a copy of the complaint on the judge prior to such appearance; the judge may be represented by counsel and

² Judiciary Law §44(1) also provides that “[u]pon receipt of a complaint (a) the commission shall conduct an investigation of the complaint; or (b) the commission may dismiss the complaint if it determines that the complaint on its face lacks merit.”

³Judiciary Law §44(2) provides that the Commission “may on its own motion initiate an investigation of a judge, with respect to his qualifications, conduct, fitness to perform or the performance of his official duties. Prior to initiating any such investigation, the commission shall file as part of its record a written complaint, signed by the administrator of the commission, which complaint shall serve as the basis for such investigation.”

may present evidentiary data and material relevant to the complaint. Judiciary Law §44(3). If during the investigation the Commission determines that a hearing is warranted, then it may direct that a formal written complaint be drawn, which must be signed and verified by the administrator, and contain allegations of judicial misconduct. Judiciary Law §44(4); Commission's Operating Rules & Procedures §7001.1(g). Here, the complaints in issue initiated the investigation and are to be distinguished from a formal written complaint. Complaints which initiate an investigation need not proffer facts that "would support formal charges." Matter of New York State Commission on Judicial Conduct v Doe, *supra* at 61.

As to petitioner's argument that the Commission is without jurisdiction in those matters where there are no signed complaints by individual court officers or by the attorney involved, the investigation was initiated based on complaints signed respectively by the President of the Court Officers Association, the union which represents the individual court officers, and the Attorneys-In-Charge of the Juvenile Rights Division of the Legal Aid Society, the attorney's employer. Both complaints are signed, written communications to the Commission which include allegations as to petitioner's "conduct, qualifications, fitness to perform or performance of [her] official duties." NY Const, art 6, §22(a); Judiciary Law §44(1). Neither the Judiciary Law nor the Commission's Operating Procedures require that a complaint, during the investigatory stage, be based on personal knowledge. Nor is there any requirement that a complaint is limited to the four corners of a single document or may not reference other documents.

The request from the Legal Aid Society includes a letter from the head of the Juvenile Rights Division seeking an investigation, referencing two letters including one written by the

attorney involved to the administrative judge of Bronx County Family Court which details petitioner's conduct. The request for an investigation by the president of the Court Officers Association includes certain memos and an incident report, and was supplemented by a letter from the Commission to petitioner giving a synopsis of six allegations involving court officers. Petitioner does not complain that she was unable to identify the matters in question or that she has been unable to prepare her testimony regarding these allegations. See Matter of Going, supra at 125. Moreover, both organizations are recognized within the court system, and members of those organizations are necessary and active participants in the daily operations of Family Court. Under these circumstances, when the documents are considered together, it cannot be said that an insufficient predicate exists for Commission's investigation into these matters.

To the extent petitioner argues that the organizations initiating the complaints are biased against her, refutes some allegations, asserts that the transcripts demonstrate that the Commission mischaracterizes some of the underlying interactions, provides explanations for others and argues that certain incidents are trivial in nature, at this investigatory stage, petitioner's arguments and explanations are insufficient grounds for enjoining the Commission from pursuing an investigation, but rather are evidentiary submissions and arguments properly presented to the Commission for consideration as to whether formal charges should be drawn pursuant to Judiciary Law §44(4).

As to petitioner's objection to the Commission's investigation of her exchange with the law guardian in the PH proceeding based on the lack of a complaint signed by the law guardian, this inquiry arose in connection with the complaint signed by PH, a litigant in that proceeding;

petitioner does not challenge the investigation of the PH complaint. The transcript reflects that the exchange between petitioner and the law guardian occurred within the context of the PH proceeding, and the issues involving the law guardian are intertwined with the investigation of petitioner's conduct in the PH matter.

In opposing the petition, the Commission relies in part on Matter of New York State Commission on Judicial Conduct v. Doe, *supra*, to argue that its authority to investigate allegations of judicial impropriety is not limited to the specific allegations in a complaint so long as the conduct is "reasonably related to the subject matter under investigation." *Id* at 61. While Matter of New York State Commission on Judicial Conduct v. Doe, does not deal directly with the scope of an investigation in relation to the complaint, the Court of Appeals addresses generally the scope of the Commission's investigatory powers. *Id* at 59-61. In that case, the Commission initially received an individual letter involving a judge's failure to repay a specified loan, and based on that letter and its own investigation, the Commission filed an administrator's complaint regarding another unpaid loan and the judge's participation in a specified profit-making business. The Commission then sought, through a subpoena, records and writings during the judge's ten-year tenure, relating to all loans, business activities, any past and current indebtedness, and all checking accounts, including cancelled checks. The question before the Court of Appeals was whether the Commission is empowered to issue a subpoena for documents of transactions not specifically identified in the individual or administrator's complaints. The Court held that the subpoena was valid to the extent it sought records regarding all loans and business activities during the judge's tenure as such information "directly relates" or "bear[s] a

reasonable relationship to the subject matters under investigation.” Id at 62. However, with respect to the production of all writings, cancelled checks and other checking account documents relating to all past and current indebtedness, the Court held that the subpoena was “impermissibly overbroad,” as it sought information “having no relation to the matters presently under investigation.” Id.

Here, as in Matter of New York State Commission on Judicial Conduct v. Doe, the allegations regarding the law guardian involve the same subject matter as asserted by PH in the complaint, that is, discourtesy and disrespect to a participant in the proceeding, and involve the same proceeding as reflected in the same transcript. Furthermore, petitioner does not allege that she is unable to identify the matters in issue or is unable to prepare her testimony regarding these issues. See Matter of Going, supra at 125. Moreover, the principal purposes of a complaint have been satisfied, as is evident from petitioner’s submissions, including her explanatory affidavit and an affidavit from the law guardian stating that petitioner was not discourteous, that she would not have made a complaint based on their exchange, that petitioner decides matters on the merits, that “we” could use more judges like petitioner, and that she hoped petitioner would continue on the bench. However, as noted above, at the investigatory stage these issues are proper for the Commission to consider in connection with its determination as to whether a formal complaint should be drawn. For the foregoing reasons, the absence of a specific complaint from the law guardian is not grounds for enjoining the Commission’s investigation. See Matter of New York State Commission on Judicial Conduct v. Doe, supra.

The cases cited by petitioner, Matter of Going, supra and Matter of Richter v. State Commission on Judicial Conduct, 85 AD2d 790 (3rd Dept 1981), app denied 56 NY2d 508

(1982), do not support a contrary conclusion. While dicta in both cases suggest that the challenged conduct at issue in those cases may have required an additional complaint, the facts in those cases are readily distinguishable from those at bar. In Matter of Going, the conduct under investigation was in the nature of sexual harassment, and the challenged conduct involved an ex parte order reinstating a friend's driver's license; in Matter of Richter v. State Commission on Judicial Conduct, the challenge involved an investigation into an additional 48 matters unrelated to the initial matter under investigation.

For the same reasons discussed above, this court finds that the Commission should not be enjoined from inquiring into the conduct reflected in the S and R transcripts. In a letter dated October 31, 2006, the Commission informed petitioner that inquiry would be made as to these matters. Initially, the Commission sent petitioner a letter dated April 3, 2006, informing her that "[t]he Commission on Judicial Conduct is investigating complaints alleging that you were rude and made inappropriate comments to litigants and others who appear before you." Referencing the RM and PH matters, and one incident involving an individual court officer, the letter requested that petitioner respond in writing to certain questions. Apparently, in June 2006, after receiving other complaints, the Commission requested petitioner to appear and give testimony. Significantly, with the exception of the complaint regarding petitioner's refusal as to one assignment, the conduct under investigation involves allegations of discourtesy and disrespect towards litigants, attorneys, court officers, fellow judges and others, giving rise to issues of judicial intemperance. It is evident from the face of the S and R transcripts that the conduct to be investigated is of the same nature as the conduct already under investigation, i.e. disparaging

remarks to litigants and attorneys, involving the use of similar words and comments relating to their mental health and appearance. The Commission has already initiated an investigation of this specific type of conduct, and as petitioner has been given notice of the intent to inquire into such matters, it cannot be said that the Commission is exceeding or is without jurisdiction to investigate the conduct in the S and R transcripts. See Matter of New York State Commission on Judicial Conduct v. Doe, supra. Furthermore, as in the matter involving the law guardian, petitioner does not allege that she is unable to identify the conduct or prepare her testimony. See Matter of Going, supra at 125. Thus, the principle purpose of a complaint has been satisfied.

As to the matter involving FB, petitioner correctly points out, that the letter FB sent to the Commission asks for petitioner to be removed from presiding over her case. In a follow-up letter, FB's attorney urges the Commission to consider her client's allegations, and states that she intends to make a motion for petitioner to recuse herself. Both letters contain allegations that in a paternity action, petitioner was rude and disrespectful to FB, and questioned FB's morality. Under these circumstances, the two letters are sufficient to serve as complaints from FB and her attorney.

Petitioner also objects to the FB complaint and the matters in the S transcript, on the ground that they involve proceedings presently pending before her. Petitioner argues that the Commission's investigation should be enjoined as it impacts on the independence of the judiciary, by encouraging complaints in pending matters in an improper attempt to influence the court or seek recusal. This argument is rejected. The determination of a judge's ability to be fair and impartial in light of a complaint filed with the Commission, lies in the individual judge's

discretion as to whether recusal is warranted. See Schwartz v. Schwartz & Schlacter, 188 AD2d 285 (1st Dept 1992). Petitioner's further argument based on Canon 3(B)(8), which prohibits a judge from publically commenting on matters pending before her, is likewise rejected, as the judiciary law expressly provides that the Commission's investigation at this stage is confidential. See Judiciary Law §44(4).

As to the complaints from court officers and the administrator's complaints involving petitioner's conduct toward fellow judges and her refusal to preside in the intake part, petitioner contends that the Commission is without jurisdiction to investigate allegations of discourtesy to courts officers and fellow judges, or to investigate matters relating to internal court operations and administration. To support this contention, petitioner relies on Canon 3(B)(3) of the Code of Judicial Conduct and section 100.3(B)(3) of the Rules Governing Judicial Conduct, which require that

[a] judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and *others with whom the judge deals in an official capacity*, and shall require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control. [emphasis added]

Petitioner argues that the "others" to whom the judge must be courteous, are limited to those who come before a judge in an "official capacity," and that court officers and fellow judges do not fall into such category. Petitioner further argues that her interpretation is reinforced by the inclusion of "staff" and "court officials" in the second part of the rule. Specifically, petitioner asserts that "[t]he inclusion of such groups among those 'subject to the judge's direction and control,' as contrasted to those who appear before her in an 'official capacity,' further underscores that Canon 3(B)(3) does not proscribe judicial courtesy toward court officer and fellow judges."

Petitioner's interpretation is rejected, as Canon 3(B)(3) requires a judge to be courteous to everyone she deals with in an official capacity, and it cannot be reasonably disputed that in the courtroom, in connection with the operation of a court part, a judge deals with both court officers and fellow judges "in an official capacity." Here, the specific conduct in the complaints involved interactions between petitioner and individual court officers and fellow judges, which occurred in petitioner's courtroom while court was in session, and related to the operation of the courtroom, and the performance of petitioner's duties and responsibilities as a judge. Such interactions while petitioner was presiding court, are distinguishable from personal interactions between a judge and court officers or fellow judges which take place while court is not in session. Under these circumstances, for the purpose of an investigation, it cannot be said that this aspect of the investigation should be enjoined on the ground that petitioner was not dealing with the court officers and fellow judges in "an official capacity."⁴

Finally, petitioner argues that the Commission is without jurisdiction as to the matters involving the court officers, fellow judges, and her refusal as to one assignment, as such matters concern internal court operations and administration. This argument without merit. Even if other avenues are available to resolve issues that arise between judges and court officers or fellow judges, that fact alone does not preclude the Commission's investigation. Moreover, petitioner's

⁴To support her interpretation, petitioner further cites to revisions to the American Bar Association's Model Code of Judicial Conduct, proposed by the Joint Commission to Evaluate the Model Code of Judicial Conduct. The proposed revision in the Model Code's counterpart to New York Canon 3(B)(3) at issue here, adds specific references to "staff" and "court officials" as those to whom a judge must be courteous. Such proposed revision is not inconsistent with the conclusion reached above.

alleged failure to perform the intake assignment falls squarely within the ambit of the Commission's jurisdiction to "investigate and hear complaints with respect [a judge's] performance of [her] official duties." NY Const, art 6, §22(a). Contrary to petitioner's assertion, Matter of Lenney, 71 NY2d 459 (1988) is inapplicable, as in that case the "matters of internal court administration" to which the Court of Appeals referred, involved calendar control and issues of substantive law. While petitioner correctly points out that the persistent failure to perform judicial duties is the constitutional standard by which the Commission evaluates a judge's conduct, and that the allegations appear to involve an isolated incident, as noted above, this challenge and petitioner's other challenges as to the underlying merits of the complaints, and her assertion that her testimony and other evidence refutes the allegations of discourtesy and disrespect, should be presented to the Commission for consideration in determining whether formal charges are appropriate. In reaching the foregoing conclusions, it must be emphasized that the issue before this court is whether the Commission's investigation should be enjoined, not whether any allegation provides a sufficient basis for a formal complaint.

In opposing the petition, the Commission also argues that since petitioner has already appeared before the Commission pursuant to Judiciary Law §44(3) and testified as to four of the complaints, the petition should be dismissed as to those complaints on mootness grounds. This argument is without merit. Contrary to the Commission's assertion, neither Matter of Richter v. State Commission on Judicial Conduct, *supra*, nor Matter of Sims v. New York State Commission on Judicial Conduct, 94 AD2d 946 (4th Dept 1993), supports a different result as in both those cases the judge involved voluntarily gave testimony before the Commission without

preserving any objection. In the instant case, as clearly indicated in the transcript, petitioner specifically objected to testifying about the challenged aspects of the investigation, and counsel to the Commission acknowledged such objection.

Petitioner asserts that the Commission has acted in a manner inconsistent with its role as a neutral investigator of judicial conduct by mischaracterizing the facts and the colloquies in issue. To support this assertion, petitioner for the most part relies on the context of the conduct under investigation and proffers explanatory evidence. However, the record as a whole does not reflect that the Commission has acted in a manner that is biased against or prejudicial to petitioner, so as to provide grounds for enjoining the investigation. Notwithstanding this conclusion, it is noted that the Commission should exercise its authority with impartiality in all aspects of its investigation, including ensuring neutrality and accuracy in any characterization of the conduct under investigation.

Finally, the Court turns to petitioner's request for an order, pursuant to section 216.1 of the Uniform Rules for New York State Trial Courts, sealing the court record, including "all documents in and related to this proceeding." In support of this application, petitioner's attorney submits an affidavit that sealing is warranted in view of the "sensitive nature of the issues involved." Specifically, petitioner asserts that this proceeding challenges the investigation of a judge which is confidential pursuant to Judiciary Law §44(4); the petition describes sensitive and personal matters litigated in Family Court which are unique to the litigants and not of general public interest; the petition raises security issues relating to Bronx Family Court, which for safety reason should remain confidential; and absent a sealing order, petitioner's ability to perform her duties, and her reputation, may be needlessly and adversely affected.

At the outset, it should be noted that this court previously issued orders dated December 11, 2006, December 13, 2006 and December 18, 2006, directing that the record be temporarily sealed until the determination of this proceeding or further order of this court, and directing the redaction of the names of all litigants in the Family Court proceedings at issue, and the redaction of any information regarding security at Bronx Family Court. In accordance with the court's order, the parties have filed redacted papers which shall be the official record of this proceeding. Thus, the privacy and security issues raised in petitioner's original order to show case have been resolved, and need not be addressed in determining whether sufficient grounds exist for permanently sealing the record in this proceeding.

As a broad constitutional proposition, the public as well as the press are entitled to have access to court proceedings. Danco Laboratories, Ltd. v. Chemical Works of Gedeon Richter Ltd., 274 AD2d 1, 6 (1st Dept 2000). Moreover, New York statutory and common law "have long recognized that civil actions and proceedings should be open to the public in order to ensure that they are conducted efficiently, honestly and fairly." Matter of Conservatorship of Brownstone, 191 AD2d 167, 168 (1st Dept 1993). Consequently, judicial proceedings are presumptively open to the public and the press, unless compelling reasons for closure are presented. Anonymous v. Anonymous, 263 AD2d 341, 341-342 (1st Dept 2000); Herald Co. Inc. v Weisenberg, 89 AD2d 224, 226 (4th Dept 1982), aff'd 59 NY2d 378 (1983); Merrick v. Merrick, 154 Misc2d 559, 562 (Sup Ct, NY Co 1992), aff'd 190 AD2d 516 (1st Dept 1993).

With respect to the sealing of court records, section 216.1(a) of the Uniform Rules for New York State Trial Courts directs that "[e]xcept where otherwise provided by statute or rule, a court shall not enter an order in any action or proceeding sealing the court records, whether in

whole or in part, except upon a written finding of good cause, which shall specify the grounds thereof. In determining whether good cause has been shown, the court shall consider the interest of the public as well as of the parties. Where it appears necessary or desirable, the court may prescribe appropriate notice and opportunity to be heard.” 22 NYCRR § 216.1(a); Liapakis v. Sullivan, 290 AD2d 393 (1st Dept 2002); In re Will of Hoffmann, 284 AD2d 92, 93 (1st Dept 2001); Danco Laboratories, Ltd. v. Chemical Works of Gedeon Richter Ltd., supra at 8; Doe v. Bellmore-Merrick Central High School District, 1 Misc3d 697, (Sup Ct, Nassau Co 2003); Coopersmith v. Gold, 156 Misc2d 594 (Sup Ct, Rockland Co 1992).

Although “good cause” is a standard that is “difficult to define in absolute terms, a sealing order should rest on a sound basis or legitimate need to take judicial action,” Danco Laboratories Ltd. v. Chemical Works of Gedeon Richter, Ltd., supra at 8 (quoting Coopersmith v. Gold, supra), presupposing that “compelling circumstances must be shown by the party seeking to have the records sealed.” Coopersmith v. Gold, supra at 606. “Confidentiality is clearly the exception, not the rule,” In re Will of Hoffman, supra at 94, and the presumption of openness of court records remains in the absence of compelling circumstances for secrecy, Coopersmith v. Gold, supra at 606.

Here, petitioner fails to make an adequate showing of “good cause” to warrant a sealing order as to the entire record in this proceeding. The investigation of a judge necessarily implicates the integrity of and public confidence in the judiciary, and is a matter of legitimate public concern. The Court of Appeals has made clear that while the legislature has established strict rules of confidentiality in connection with complaints, correspondence and

proceedings before the Commission on Judicial Conduct, “a blanket rule requiring the sealing of all court records involving proceedings by the commission is unjustified in the absence of legislative mandate.” Matter of Nicholson v. State Commission on Judicial Conduct, supra at 613. The Court of Appeals, went on to explain, however, that “[p]ublic access to court records need not and should not signal access to the commission’s internal proceedings.”

This court concludes that under the circumstances herein, good cause exists for a limited sealing order sealing the transcripts of the investigatory proceedings before the Commission on September 27, 2006 and September 28, 2006, which the Commission submitted as exhibits 18 and 19 to its answer. Judiciary Law §44(4) explicitly provides for confidentiality of such investigatory proceedings, and access to the entire transcripts of those proceedings is not necessary to the issues raised herein.

Accordingly, it is

ORDERED AND ADJUDGED that the petition is denied and the proceeding is dismissed; and it is further

ORDERED that the redacted papers shall be the official record of this proceeding and the Clerk is directed to file the redacted papers as the official record of this proceeding; and it is further

ORDERED that petitioner’s motion for a sealing order is granted only to the extent that the transcripts of the investigatory proceedings before respondent Commission on Judicial Conduct on September 27, 2006 and September 28, 2006, which were submitted as exhibits 18 and 19 to the Commission’s answer, shall be sealed, and in all other respects petitioner’s motion for a sealing order is denied; and it is further

ORDERED that the Clerk is directed to seal the transcripts of the investigatory proceedings before respondent Commission on Judicial Conduct on September 27, 2006 and September 28, 2006, which were submitted as exhibits 18 and 19 to the Commission's answer; and it is further

ORDERED that the court's prior order temporarily sealing the entire record in this proceeding, shall remain in effect until February 14, 2007, and the Clerk is directed to temporarily seal the entire record until February 14, 2007.

This constitutes the decision, order and judgment of the court.

DATED: February 8, 2007

ENTER:



J.S.C.