INGRAM YUZEK GAINEN CARROLL & BERTOLOTTI, LLP
250 PARK AVENUE
NEW YORK, NEW YORK 10177
Telephone (212) 907-9600
Facsimile (212) 907-9681

Dean G. Yuzek

Writer's Direct Dial: (212) 907-9699
E-Mail: dyuzek@ingramllp.com

June 25, 2007

VIA E-MAIL TRANSMISSION
AND FEDERAL EXPRESS

Robert H. Tembeckjian, Esq.
Administrator and Counsel
New York State Commission
on Judicial Conduct
61 Broadway
New York, New York 10006

Re: Hon. Marian R. Shelton

Dear Mr. Tembeckjian:

Enclosed please find Judge Shelton's Verified Answer to the Commission's Formal Written Complaint.

Very truly yours,

Dean G. Yuzek

DGY/ch

Enclosure

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to	:	**VERIFIED ANSWER TO FORMAL WRITTEN COMPLAINT**
MARIAN R. SHELTON,	:	
a Judge of the New York City Family Court, Bronx County.	:	

The Hon. Marian R. Shelton ("Judge Shelton"), by her attorneys, Ingram Yuzek Gainen Carroll & Bertolotti, LLP, submits this verified answer to the formal written complaint ("Complaint") of the Commission on Judicial Conduct ("Commission").

During her nine-year tenure, Judge Shelton has presided over tens of thousands of cases. Year after year, she has carried one of the heaviest -- if not the heaviest -- dockets among her peers in the under-resourced Family Court, a court labeled "dysfunctional" by *The New York Times*. Litigants and lawyers alike regard Judge Shelton as a hard working, courageous and effective judge, dedicated to the protection of children and those at risk of domestic violence.

The Complaint, instigated by Dennis Quirk ("Quirk"), President of the New York State Court Officers Association, is a misuse of the Commission's limited resources. As shown below, Quirk appears responsible for generating at least seven of the twelve "Charges" leveled against Judge Shelton (and at least 14 of the original 19 allegations approved for investigation), while only three of the twelve Charges involve complaints signed by the individual affected by the alleged conduct.

The Commission, in authorizing this investigation and weighing the credibility of his claims, was duty-bound -- but failed -- to evaluate Quirk's record and motives in the context of

his expressed disdain for judges. Among other incidents of his conspicuous hostility, Quirk -- as the Commission is surely aware -- was suspended for nine weeks by the Office of Court Administration as a result of his conduct in connection with his very public dispute with a Housing Court judge. He has demonstrated a disregard, if not contempt, for members of the judiciary whom he is charged with serving and protecting. As he was quoted by *The New York Times*, "If they [the judges] want a war, I don't take prisoners, I take body bags."

Quirk dislikes Judge Shelton for pointing out security lapses in the courthouse where she functions and for refusing to accede to his boast that he controls its courtrooms. He has publicly, and needless to say falsely, called her a "liar." In a belligerent phone call to Judge Shelton meant to intimidate, Quirk threatened to end Judge Shelton's career as a jurist, a threat -- now with the Commission staff's help -- he is trying to make good. It is thus no surprise that shortly after Judge Shelton was reported out by the Governor's screening committee as "extremely well qualified" for an appointment to the Court of Claims, Quirk seized on an incident involving one court officer to have his Bronx lieutenants immediately pluck from their dossiers on judges seven additional alleged discourteous incidents by Judge Shelton toward court officers, all but one without time or place.

In furtherance of his goal to mar and end Judge Shelton's judicial career, Quirk then sent to the Commission over his signature a complaint letter including these alleged discourtesies and, though well aware that the Commission's investigations are confidential, enlisted his union lieutenants to post his letter to the Commission all over the courthouse, in public areas, the offices of Legal Aid and 18-B attorneys, and even in other judges' robing rooms. He also sent copies of the letter to then-Governor Pataki, Judge Lauria, the Mayor's Committee on the Judiciary, the New York State Senate and the New York State Assembly. If Quirk's animus

were at all in question, this malicious conduct should remove any doubt. Quirk's conduct is inexplicable other than as a product of his desire to disparage and defame Judge Shelton.

Reading the Complaint, it appears that seven of the eight Quirk-driven officer "complaints," based on which the Commission authorized the investigation, have now been dropped. By launching an investigation based on those "complaints" but dropping them from its Complaint, the Commission has effectively acknowledged that they were a sham.

But once Quirk, by raising these phony complaints, had gamed the Commission into launching an investigation, various officers were questioned and shared their gossip with Commission staff members to manufacture additional "complaints." The stories they told included Judge Shelton's alleged discourtesy toward two other judges (one of whom had apologized -- in writing -- for *her* behavior toward Judge Shelton) as well as other purported misconduct. The Commission's staff should have determined itself -- as it could have from transcripts and other evidence or merely by interviewing available witnesses -- that these allegations were unfounded.

But rather than proceeding objectively -- which would have exculpated Judge Shelton in light of the complaints' baselessness -- the Commission staff sought to buttress the Quirk-created allegations by weaving a tapestry of purported discourteous conduct by Judge Shelton. Such conduct was allegedly exhibited not only to the two judges, but also to a wife-battering litigant, other litigants with documented mental-health issues that leave them with little or no credibility, an out-of-control attorney whose insults to the Court will speak for themselves and another attorney whose claims cannot withstand scrutiny, a member of the public -- the wife of a court clerk -- who, while waiting impatiently for her husband to finish a court session (tellingly, as to

Judge Shelton's work ethic, at seven o'clock on a Friday night), called Judge Shelton an "asshole."

The Commission now seeks to touch all these bases, engaging in prosecution by sound bite and ignoring context, since the only way it can attempt to justify departing from its 30-year history of *not* investigating a judge's alleged discourtesy to staff or other judges is to urge that such behavior is part of a pattern of alleged intemperate behavior by Judge Shelton. The Commission cannot disguise, however, that the other stale "complaints" tacked on to Quirk's would not have been pursued -- indeed, *had* not been pursued -- before he enlisted the Commission staff's assistance in the first instance.

The Commission has all but acknowledged that it has already come to a determination as to Judge Shelton. Specifically, although Judge Shelton's counsel would be away for one-third of the 20-day period to answer the Complaint, the Commission's Administrator, in a June 12, 2007 letter to Judge Shelton's counsel, reaffirmed his Chief Counsel's earlier "denial" of Judge Shelton's counsel's request for a modest extension because "time is now of the essence in this matter, given that [Judge Shelton's] current term of office expires on December 31, 2007, and she has not been reappointed to date."

If the Commission now believes time is pressing, it has no one to blame but itself. It should be noted that the Commission voted on the charges on May 10, 2007 but did not serve them on Judge Shelton until June 5, 2007. The charges are the product of a 15-month investigation, with the most recent item having been raised by the Commission back on October 31, 2006. To only now suggest that "time is of the essence," and use its own delay to justify denying Judge Shelton's counsel a routinely-extended courtesy, underscores the consistently

arbitrary and capricious manner in which the Commission has conducted this proceeding; behavior which, as shown below, violates basic precepts of due process.

* * *

Set forth below is a table of the Commission's allegations, including the original but now abandoned complaints that Quirk used to trigger the investigation against Judge Shelton, and those now being prosecuted. As applicable, the table shows the date of each alleged incident and/or complaint (referred to if pending as "Charge" and numbered with Roman numerals to correspond with the Complaint), the category of the complainant (or person on whose behalf the Commission is complaining), the origin of the complaint (i.e., "Quirk" refers either to Quirk's direct contact with the Commission *or* to tales told by his officers to staff members), and whether there is a signed complaint *by the affected person*:

CHARGE	NAME	ORIGIN	DATE OF INCIDENT(S)	DATE OF COMPLAINT	SIGNED
Withdrawn	J. Biers (Officer)	Quirk	"approximately nine months ago" (from 8/16/06)[1]	2/2/06	No
Withdrawn	C. Diehl (Officer)	Quirk	"In or around September 2004" "In early 2006"[1]	2/2/06	No
Withdrawn	J. Drewes (Officer)	Quirk	"In late 2005"[1]	2/2/06	No
Withdrawn	R. Hedgepeth (Officer)	Quirk	"Within the past two years" (from 8/16/06)[1]	2/2/06	No
Withdrawn	R. Otero (Officer)	Quirk	"Approximately two years ago" (from 8/16/06)[1]	2/2/06	No
Withdrawn	T. Tan (Officer)	Quirk	"In 2005 or 2006"[1]	2/2/06	No
Withdrawn	Vermilyea (Officer)	Quirk	12/4/03	2/2/06	No
I	Michelle Nusser (Spectator)	Quirk	12/10/04	6/5/006 (Administrator)	No
II	Russina McDuffie (Litigant)	McDuffie/ Miller[2]	10/20/05	10/23/05	Yes
III	Mina MacFarlane (Attorney)	Commission	10/20/05	NONE	No
IV	Janette Smith (Officer)	Quirk	1/31/06	2/2/06	No
V	Mariana Toledo-Hermina (Attorney)	Legal Aid Society[3]	3/7/06	3/13/06	No
VI	Hon. Monica Drinane (Judge)	Quirk	4/29/05	6/5/06 (Administrator)	No
VII	Hon. Alma Cordova (Judge)	Quirk	10/04	6/5/06 (Administrator)	No
VIII	Dean Smith (Litigant)	Smith	5/24/05, 9/7/05, 9/19/05	5/17/06	Yes
IX	Felicia Barnes (Litigant)	Barnes	6/10/05	8/21/06	Yes
X	Conduct[4]	Quirk	2/1/06	10/31/06 (Administrator)	No
XI	Solomon	Quirk	10/27/05	NONE	No
XII	Ruiz	Quirk	2/6/06	NONE	No

[1] Per Commission's "synopsis" of court officer incidents provided to counsel for Judge Shelton on August 16, 2006 after repeated requests. The synopsis is, as quoted, equally worthless and vague as to the content and timing of the alleged incidents as the so-called now-withdrawn "complaints."

[2] Upon information and belief, this "complaint" was instigated by Elizabeth Miller, a relative of McDuffie with a penchant for lashing out at government agencies.

[3] The Legal Aid Society, by Attorneys-in-Charge of its Juvenile Rights Division, Tamara Steckler and Amanda White, complained to the Commission on behalf of Ms. Toledo-Hermina after, by their admission in a letter dated March 13, 2006, they became "aware that a complaint has been filed by Dennis Quirk . . . ." The letter apparently was the Society's way of getting back at Judge Shelton for her strong criticism of its neglect of the children it is supposed to serve in pursuit of larger causes, manifest in the pattern of certain staff counsel failing or refusing to meet with the children -- their clients -- prior to appearing in court on their behalf. *See* the Decision of Interest reported on May 4, 2004 in the *New York Law Journal*, Volume 231 (5/4/2004 NYLJ 19 (col. 1)).

[4] Alleged failure to preside over intake calendar on February 1, 2006.

* * *

Judge Shelton, for her answer to the specific allegations of the Complaint, alleges as follows:

1. Denies knowledge or information sufficient to form a belief regarding the truth of the allegations of paragraph 1 of the Complaint, except acknowledges that the Commission's jurisdiction derives from the New York State Constitution and the Judiciary Law. While Judge Shelton does not dispute the origins of the Commission's jurisdiction, she challenges the notion that the Commission is entitled to operate unfettered by constitutional constraints or by the statutorily-imposed limitations on its mandate and its powers, including that it may not proceed with an investigation in the absence of a complaint. In *Levin v. Murawski,* 59 N.Y.2d 35, 462, N.Y.S.2d 836 (1983), the Court of Appeals reaffirmed its earlier holding in *Matter of A'Hearn v. Committee on Unlawful Practice of Law of New York County Lawyers Association,* 23 N.Y.2d 916, 298 N.Y.S.2d 315 (1969), that "[t]here must be authority, relevancy, and some basis for inquisitorial action." *Levin,* 59 N.Y.2d at 41, 462 N.Y.S.2d at 839.

2. Denies knowledge or information sufficient to form a belief regarding the truth of the allegations of paragraph 2 of the Complaint.

3. Denies the allegations of paragraph 3 of the Complaint.

4. Admits the allegations of paragraph 4 of the Complaint, except alleges that Judge Shelton has been a Judge of the New York City Family Court since July 16, 1998, and was assigned to Bronx County on June 7, 1999.

AS TO CHARGE I

5. Denies the allegations of paragraph 5 of the Complaint.

6. Denies knowledge or information sufficient to form a belief regarding the truth of the allegations of paragraph 6 of the Complaint as to the marital status of Michelle Nusser and Ben Nusser and admits that Ben Nusser was the Intake Clerk in the courtroom over which Judge Shelton was presiding on December 10, 2004.

7. Denies knowledge or information sufficient to form a belief regarding the truth of the allegations of paragraph 7 of the Complaint, except admits that Ms. Nusser entered the courtroom before 6:50 p.m. on the Friday evening of December 10, 2004.

8. Denies the allegations of paragraph 8 of the Complaint, except alleges that while Court was in session and the business of the Court was still being conducted, Ms. Nusser interfered with such business by demonstratively beckoning to Mr. Nusser for him to leave the courtroom prematurely.

9. Denies the allegations of paragraph 9 of the Complaint and alleges that when Ms. Nusser was asked for good cause to step out of the courtroom, her response to Judge Shelton was "what an asshole."

10. Denies the allegations of paragraph 10 of the Complaint, except admits that Ms. Nusser, after calling the Judge an asshole, was returned by a court officer to the courtroom at Judge Shelton's direction, advised that she was in summary contempt of court, handcuffed by the court officer, and told by Judge Shelton, among other things and in response to Ms. Nusser's repeated interruptions and attempts to speak over the Judge, to shut her mouth and be quiet, and advised that she could purge her contempt upon a sincere apology to the Judge on Monday morning, whereupon she was placed in a holding area.

11. Denies the allegations of paragraph 11 of the Complaint except alleges that Judge Shelton urged Mr. Nusser to convince Ms. Nusser to apologize, that Ms. Nusser -- between five to ten minutes after being placed in the holding area -- "apologized" for calling Judge Shelton an asshole, the flippancy of which apology (including Ms. Nusser's addendum that "it was not a wise thing for me to do") was overlooked by Judge Shelton, who also told her not to enter the Judge's courtroom again for any reason.

12. Denies the allegations of paragraph 12 of the Complaint and alleges that Charge I fails to state a claim against Judge Shelton for the following reasons:

Charge I is a stale occurrence dredged up by one of Quirk's officers to pull a courtroom spectator into the mix of complainants. However, this spectator -- who apparently refused even to cooperate with the Commission's investigation -- was the too-impatient wife of a clerk who was working late with Judge Shelton and others in open court, and whose impatience over not being able to get started on her evening social event caused her to spew an epithet at Judge Shelton.

In the face of documentary evidence to the contrary, the Commission alleges that Judge Shelton acted "without cause." (Complaint, ¶ 5.)

The facts are simple, and a matter of record, as follows from a transcript of proceedings on the evening of December 10, 2004:

> THE COURT: The record will reflect that the intake clerk was leaving the part before the part was down without the permission of the Judge at 6:50 p.m. The intake part's clerk's wife was -- take your hands out of your pocket.
>
> Officer, behind her. The intake clerk's wife had entered the courtroom without the permission of the Court and with no business being in the courtroom. She stood at the door of the courtroom beckoning her husband to leave the court. The Judge asked her to step out. Her response to the Judge was "What an asshole." Quote. End quote.

After the clerk's wife "apologized" for calling Judge Shelton an asshole, having been detained for approximately five to ten minutes, her contempt was purged and she was released.

The utterance of profanity that is directed at, and in the presence of, a judge while court is in session is flagrant and offensive conduct that is contumacious, and no warning is required before the sanction of contempt is imposed. *See, e.g., People v. Keno*, 276 A.D.2d 325, 714 N.Y.S.2d 455 (1st Dep't 2000); *Roajas v. Recant*, 249 A.D.2d 95, 671 N.Y.S.2d 459 (1st Dep't 1998); *Kunstler v. Galligan*, 168 A.D.2d 146, 571 N.Y.S.2d 930 (1st Dep't 1991). After holding the clerk's wife in summary contempt, Judge Shelton attempted, prior to imposing punishment, to give her an opportunity to make a statement in extenuation of her conduct, but was precluded from doing so by her continued conduct, demeanor and utterances. (*See* Investigation Hearing Transcript at 320, 326, 328 and 331.)

There was nothing intemperate or unjustified about Judge Shelton's conduct, which was far more gracious than the clerk's wife deserved under the circumstances.

AS TO CHARGE II

13. Denies the allegations of paragraph 13 of the Complaint to the extent that the Commission has wrenched otherwise accurately quoted words out of their context, thereby affecting their meaning and intent under the circumstances, as is more fully addressed below.

14. Denies the allegations of paragraph 14 of the Complaint and alleges that Charge II fails to state a claim against Judge Shelton for the following reasons:

Charge II was apparently prompted -- as the Commission's staff is aware -- by a disaffected relative of the litigant with a penchant for writing to agencies, judges and commissions. This is perhaps why the staff did not act on the complaint, made on October 23, 2005, until electing over three months later to revive it after receiving Quirk's complaint.

The proceeding at issue involved competing applications for orders of protection, by Russina McDuffie against other family members and by the others against Ms. McDuffie. Like other cases involving such subject matter, this situation was potentially dangerous and volatile, with little if any margin for judicial error. And like many of the other cases Judge Shelton handles, this case was about the safety -- including the physical well-being -- of *all* who were appearing before the Court that day.

In contrast to the out-of-context characterizations by the Commission, the record reflects that, after a dialogue with Ms. McDuffie, Judge Shelton discerned that something was amiss, and asked her relatives, "What's the story? Is she emotionally disabled? What is going on?" Then, in response to questions from Ms. McDuffie's cousin, ("if she loves us, why bring us to court and do this? Why get an order of protection if she loves my aunt and loves me? Why do this to us?"), Judge Shelton stated: "Perhaps because she is emotionally disabled." Judge Shelton then asked, "Does she have a history?" Ms. McDuffie interjected, "No, I don't." As established below, Judge Shelton's instincts were correct. Ms. Mc Duffie did, in fact, have "a history."

The responsibility of a judge to maintain the decorum of her courtroom takes precedence over the laudable goal of courtesy. When Judge Shelton then indicated that the matter would be put down for a hearing and made certain interim orders, Ms. McDuffie shouted, "it should be the opposite." At that moment, it appeared that Ms. McDuffie was losing her self-control, as a result of which Judge Shelton, in an effort to command a combustible situation, said: "Shut up. Where do you think you are? Where do you think you are? I make an order, you tell me it should be the opposite?"

After Ms. McDuffie said, "Sorry, Your Honor," for so inappropriately challenging Judge Shelton's orders, Judge Shelton necessarily explained the basis for those orders, including that:

> The way you speak indicates to me you have some emotional or mental disability. She needs protection against you because I don't know what you are going to do to her and her children, how difficult you are going to make her life, because I believe you are emotionally unstable. That is your presentation to me today. That is my reasoning. You don't need an order of protection against her, I believe that the allegations in your petition are based on your own problems and your own limitations and your own dysfunction, not on anything that these people have done to you. * * * You need to concentrate on putting a life together for yourself, not on harassing these people, okay?

Judge Shelton then told Ms. McDuffie and her relatives that, "[i]f she wants, I will find a social worker to give [you] some guidance." The very next day, Judge Shelton entered an Order appointing Ellen Herskowitz, a Licensed Certified Social Worker ("LCSW"), "to consult with and advise Russina McDuffie with respect to education, housing, and social services entitlements . . . ."

In fact, as noted above, what Judge Shelton discerned from Ms. McDuffie's conduct regarding her personal issues and problems, as well as the services she needed, was accurate. As confirmed on February 8, 2006 by a LCSW with the Jewish Board of Family and Children's Services (the "Board"), Ms. McDuffie had been known to the Board since August 2005, was then being treated for depression and anxiety, was attending individual psychotherapy on a monthly basis, was having monthly medication follow-up visits with a staff psychiatrist for the Board, and had a psychiatric condition that was being adversely affected by the conflict she was having with her cousin and aunt; that conflict was characterized by the LCSW as "an obstacle in her achieving independence in the way of finding her own housing, consistent employment, and by making other improvements in her life."

On February 9, 2006, Ms. McDuffie withdrew her two family offense petitions and consented to a two-year final order of protection in favor of her cousin.

Judge Shelton objects to the Commission's patently unfair characterizations of what occurred. This is especially so in that what actually occurred is not the subject of competing recollections but, rather, of documentary evidence in the form of a transcript of court proceedings.

AS TO CHARGE III

15. Denies the allegations of paragraph 15 of the Complaint to the extent the Commission has wrenched otherwise accurately quoted words out of their context, thereby affecting their meaning and intent under the circumstances, as is more fully addressed below.

16. Denies the allegations of paragraph 16 of the Complaint and alleges that the Commission has no jurisdiction to pursue Charge III, which also fails to state a claim against Judge Shelton for the following reasons:

Mina MacFarlane ("MacFarlane") appeared before Judge Shelton as the Law Guardian in a case involving whether a 13-year-old boy should have to undergo a DNA test because the putative father wanted to make sure that the child was, in fact, his son. The boy's mother, Patricia Howard, filed a complaint with the Commission regarding that proceeding. The Commission is not pursuing Ms. Howard's complaint, either because it may not have been approved for investigation in the first instance or as a result of Judge Shelton's testimony.

Ms. Howard did not complain, as the Commission alleges, that Judge Shelton "yelled" at MacFarlane, or told her to "shut up" or "[g]o to therapy." (Complaint, ¶ 15.) There is also no such complaint from either MacFarlane -- hardly surprising since what MacFarlane "mutter[ed] under [her] breath" in response to a ruling by Judge Shelton was "Jesus f _ _ _ing Christ" -- or from the Administrator.

Indeed, MacFarlane has disavowed any such complaint. She has expressed the belief in an Affirmation that "the Commission is wrongly interpreting the course of the proceeding." As MacFarlane explains:

> As for the Commission's complaint that Judge Shelton "screamed" at me, I beg to disagree. I am expected to advocate for my client, and I am first to admit that arguing one's point can become heated. Family Court is not the calm oasis we would like it to be. It is a place of volatile tempers; shortened nerves, and stressed-out clients. * * * The attempt to be effective under those constraints can make exchanges appear brusque to those accustomed to a more sedate court.
>
> In this matter, I do not believe that I was being "screamed at," nor was I offended by any aspect of my exchange with Judge Shelton. In fact, after listening to the tape, I would not have made a complaint – not because I would feel intimidated about doing so or even fear the consequences of a future adverse decision. I would not have made a complaint regarding what transpired on October 20, 2005 because I do not feel a complaint is warranted.
>
> Judge Shelton and I have had our disagreements. Yet there are few judges before whom I practice where I can as readily say that regardless of the outcome, the decision was based on the merits of the matter before her.

The Commission "shall receive, initiate, investigate and hear complaints against any judge with respect to his qualifications, conduct, fitness to perform, or the performance of his official duties." Title 22 NYCRR § 7000.2. *Complaint* is defined as "a written communication to the commission signed by the complainant . . . or an administrator's complaint." *Id.* at § 7000.1 (d). *Administrator* refers to the person appointed by the Commission as its administrator. *Id.* at § 7000.1 (a).

A complaint from *someone*, even the Administrator, is a pre-requisite for the Commission to pursue this Charge. There is no such complaint here.

AS TO CHARGE IV

17. Denies the allegations of paragraph 17 of the Complaint.

18. Denies the allegations of paragraph 18 of the Complaint and alleges that the Commission has no jurisdiction to pursue Charge IV, which also fails to state a claim against Judge Shelton, for the following reasons:

Quirk sent eight "complaints" regarding court officers to the Commission. Quirk, it bears repeating, was previously suspended by the Office of Court Administration for confrontational conduct with respect to a judge and was quoted in *The New York Times*, referring to judges: "If they want a war, I don't take prisoners, I take body bags." Although Quirk later apologized for his improper conduct, he remained unrepentant. As the *Daily News* reported on August 2, 2003, Quirk said he had "no regrets" regarding the conduct which led to his suspension and that "I'd do it again tomorrow ... I'm not afraid of any judge."

Quirk's efforts in dredging up the so-called complaints regarding court officers -- all but one of which have now been withdrawn -- are aimed at derailing Judge Shelton's career as a jurist. Why else would he have posted his letter to the Commission all over the Courthouse, in public areas and other judges robing rooms, and "copied" his letter to then-Governor Pataki, Judge Lauria, the Mayor's Committee on the Judiciary, the New York State Senate and the New York State Assembly? But most importantly, the allegations regarding Judge Shelton's purported discourtesy toward court officers were frivolous and fabricated. Even the Commission, after its staff subjected Judge Shelton to extensive questioning regarding the officer-related complaints, could not pursue seven of the eight of them in light of transcriptional evidence produced by Judge Shelton that they were manufactured and false.

Significantly, the only remaining "complaint" of the original eight involving court officers is now buried as Charge IV in the Complaint, with the name of the court officer at issue mysteriously not even mentioned. The officer is Janette Smith. Despite third-hand allegations to the contrary, Judge Shelton neither yelled at nor made demeaning remarks to Janette Smith, and did not eject her from the courtroom, as Judge Shelton has stated in sworn testimony. Although there is not even a signed complaint from Officer Smith, there is a sworn statement from an eyewitness, Senior Court Clerk Leverne ("Lee") McFarland, corroborating Judge Shelton's account, as follows:

> On the day in question, neither of Judge Shelton's two regular Court Officers were in the courtroom when I entered at approximately 2:45 p.m. Court Officer Smith, who had never before worked in Judge Shelton's Part, was there, apparently substituting for one of the regular court officers.
>
> Judge Shelton, upon seeing me, said in substance, "Lee, what is going on here. The courtroom is empty. I can't get my cases done with only one officer who doesn't know what they're doing." Judge Shelton did not make demeaning remarks to Officer Smith.
>
> Nor did Judge Shelton eject Officer Smith from the courtroom or otherwise ask her to leave. Officer Smith elected to leave the courtroom herself, then returned with another officer, left again voluntarily, and then returned again, this time with a Captain of the court officers, who told one of Judge Shelton's regular court officers (who by then had returned) to "teach her," meaning Officer Smith, "the calendar."

It is unfortunate, but no business of the Commission, if Officer Smith was upset by the accurate comment, directed by Judge Shelton to Mr. McFarland, that "I can't get my cases done with only one officer who doesn't know what they're doing."

To the extent that others claim in unsigned memoranda attached to Quirk's letter to the Commission that something else was said to or about Officer Smith, that is simply not true. The complaint, made on her behalf, is an attempt to cover up her inadequate job performance and

harm Judge Shelton in the process. If the complaint made by Quirk on Officer Smith's behalf were not pretextual, then the Captain of the court officers, as Mr. McFarland explained, would not have brought her back to Judge Shelton's Part and told her regular court officer to "teach her," meaning Officer Smith, "the calendar."

In addition, the Commission does not have jurisdiction to investigate complaints regarding a judge's alleged discourtesy to court officers, because such behavior is not addressed by Section 100.3(B)(3) of the Rules Governing Judicial Conduct, which states:

> [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.

22 N.Y.C.R.R. 100.3(B)(3) (2006).

The Commission may argue that court officers must be among the "others to whom courtesy is required." In so doing, the Commission would ignore well-established principles of statutory construction. The rule of *ejusdem generis,* for example, requires that a court must limit "general language of a statute by specific phrases which have preceded the general language." N.Y. Stat. Law § 239 (b) (McKinney 2006). Here, the specific phrases preceding the "others" to whom a judge shall be courteous, i.e., litigants, jurors, etc., are those who come before the judge "in an official capacity." Court officers, for example, are not in that same category. Accordingly, the word "others" does not apply to them.

This interpretation is reinforced by the use of such terms as "staff and court officials" in the second part of Canon 3. The 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 does not proscribe judicial discourtesy toward court officers.

There is also an absence of reported cases in New York related to the Commission's authority to pursue complaints of discourtesy by a Judge to court staff, other than in the context of sexual harassment. *See, e.g., In re Going,* 97 N.Y.2d 121, 735 N.Y.S.2d 893 (2001).

AS TO CHARGE V

19. Denies the allegations of paragraph 19 of the Complaint.

20. Denies the allegations of paragraph 20 of the Complaint.

21. Denies the allegations of paragraph 21 of the Complaint and alleges that Charge V fails to state a claim against Judge Shelton for the following reasons:

Judge Shelton never "mocked" the accent of former Legal Aid Lawyer Mariana Toledo-Hermina ("Toledo-Hermina"). The record reflects that, because Toledo-Hermina was speaking too fast when giving her appearance in a proceeding (which Judge Shelton is obligated to take down), Judge Shelton merely instructed her to "slow down" and "enunciate." Judge Shelton also instructed Toledo-Hermina, as Judge Shelton would instruct any other professional standing before the bench, to "take your hand out of your pocket." As Mr. McFarland, a witness to the events, recounts:

> On the morning of March 7, 2006, when Ms. Toledo-Hermina began giving her appearance in the matter of Dramane Coulibaly, she was told by Judge Shelton to slow down and speak clearly.
>
> Judge Shelton did not make insensitive or demeaning remarks about Ms. Toledo-Hermina's accent. Judge Shelton did not mock or mimic Ms. Toledo-Hermina's accent or disparage her in any way. Judge Shelton did not laugh at or about Ms. Toledo-Hermina or make any derogatory comments. I am sensitive to subtle acts of prejudice, not merely overt ones. Having worked with Judge Shelton on a daily basis for many years, I can state without fear of contradiction that Judge Shelton never makes insensitive or demeaning remarks about anyone's accent, and does not otherwise exhibit prejudice or insensitivity to any ethnic group.

The allegation that Judge Shelton would have mocked the accent of Toledo-Hermina or anyone is false. Coincidentally, Judge Shelton wrote a reference letter for Toledo-Hermina's close friend, Jenny Garcia, who is also Hispanic, *before* Judge Shelton had any knowledge of their friendship or the Legal Aid Society's complaint on Toledo-Hermina's behalf. It states:

> I am delighted to write this reference letter on behalf of Ms. Jenny Garcia. Ms. Garcia has appeared before me as a simultaneous Spanish interpreter almost daily in Bronx Family Court since December 2004. While the quality of her work is excellent, it is not that which makes her stand out among her peers but her demeanor toward the litigants which is always respectful and embracing. Because I know she will treat the litigants with such kindness, I am always pleased when she enters the courtroom.

The comments in this regard of Support Magistrate Diego M. Santiago, who was Judge Shelton's Court Attorney for a two-year period, are also instructive:

> As to the overall issue of prejudice, I have never known Judge Shelton to make a racist, sexist or homophobic remark, or to act in a manner reflecting insensitivity to anyone as a result of their race, gender, ethnicity, disability or sexual orientation. I am of Puerto Rican descent and bilingual, and am very sensitive to issues of language and the ability of those who appear in court to understand what is transpiring and to be understood when they are speaking. So, too, is Judge Shelton. While working under Judge Shelton's supervision, I was pleased that she would endeavor to have the best interpreters in her courtroom for the benefit of litigants, and that she tried whenever possible to make use of my proficiency in the Spanish language. The notion that Judge Shelton would make a demeaning or insensitive remark about someone's accent is, in my view, preposterous, because such conduct would be completely out of character for Judge Shelton; simply, it would not be in her nature to do so.
>
> I feel compelled to make another point regarding the issue of prejudice. Adoptions are closed proceedings. As such, there is no sense for a jurist involved in such a proceeding to "put on a show," because it will not be seen, or to act contrary to one's nature. Many, and perhaps most, adopted children in the Bronx Family Court are children of color. On "adoption day," Judge Shelton buys flowers and stuffed animals for the children, and has them give the flowers to their new mothers. The few of us who have been privileged to be present at these proceedings never fail to be moved by Judge Shelton's compassion and grace. Ethnically insensitive people do not conduct themselves as Judge Shelton does; nor

> would Judge Shelton -- if ethnically insensitive -- have involved me to the extent she did in court proceedings or have embraced me as warmly, personally and professionally, as she has.

The Commission also claims that, on a separate occasion, Judge Shelton asked Toledo-Hermina to leave the courtroom because she, Toledo-Hermina, was dressed inappropriately for court. This allegation is true, as Ms. Toledo-Hermina *was* dressed in a manner not suitable for the courtroom. As Mr. McFarland, a witness to the event, confirms:

> Ms. Toledo-Hermina's attire on the afternoon of that same day, when she was asked by Judge Shelton to leave her courtroom, was inappropriate for the appearance of an attorney in a courtroom.

As noted above, the complaint involving Ms. Toledo-Hermina to the Commission was not made by her but by the Legal Aid Society, which acknowledged that it only wrote to the Commission after seeing Quirk's letter, and whose own animus toward Judge Shelton, because of her critique of certain policies of the Society, is well documented.

AS TO CHARGE VI

22. Denies the allegations of paragraph 22 of the Complaint, including to the extent that the Commission -- intent on distorting the facts regarding Judge Drinane's unprofessional intrusion into Judge Shelton's courtroom and confrontation with Judge Shelton during a pending proceeding -- has perpetuated transcriptional errors or otherwise quoted words out of their context, thereby affecting their meaning and intent under the circumstances, as is more fully addressed below.

23. Denies the allegations of paragraph 23 of the Complaint and alleges that the Commission has no jurisdiction to pursue Charge VI, which also fails to state a claim against Judge Shelton, for the following reasons:

Charge VI is based on nothing more than gossip from court officers.

The reality is that Judge Drinane, on April 29, 2005, in disregard of the fact that Judge Shelton was in the midst of a hearing on a grandmother's custody petition alleging extraordinary circumstances which would warrant her taking custody of a child over the parents, burst into Judge Shelton's courtroom and interrupted the hearing. Why? Because Judge Drinane was going back and forth with Judge Shelton over whether Aglaia Papadopoulos, Esq., an 18-B Assigned Counsel who was then actively involved at the hearing for one of the parties to the proceeding at issue, should remain in Judge Shelton's courtroom while the hearing was ongoing or immediately leave the courtroom for the purpose of attending to another matter in Judge Drinane's courtroom.

The transcript of the proceeding before Judge Shelton reflects the untoward and disruptive nature of what Judge Drinane did next. In mid-hearing, while Judge Shelton was questioning one of the parties before her, Judge Drinane entered the courtroom through the robing room side and said first, confrontationally, in robes with arms crossed over her chest, "I want to speak to you," not "Judge, may I speak to you?" (This is also a more polite rendition of Judge Drinane's demand that Judge Shelton interrupt the proceeding before her, as the court reporter has frankly admitted to Judge Shelton that he was hesitant even to record the embarrassing scene created by Judge Drinane and then had to "catch up" on the record, perhaps accounting for his paraphrasing, as Judge Shelton explained in her sworn testimony.) The transcript then reflects Judge Shelton stating, "No, Monica. I'm on the bench. Monica, step out of my courtroom, please." In fact, although not reflected by the transcript but heard by other courtroom personnel, Judge Shelton also said, "Monica, please don't do this; it is utterly improper."

Court Officer Tim Tan was in the courtroom at the time. He was not "directed . . . to shut the door on Judge Drinane." (Complaint, ¶ 22.) This is apparently the Commission's version of the erroneous statement in a memorandum from Captain Patrick Kelly to Major Michael DeMarco, dated January 31, 2006, that Officer Tan was "ordered to remove a judge," presumably referring to Judge Drinane. Rather, Officer Tan was told by Judge Shelton to "shut the door" to her courtroom. He was told by Judge Drinane, "don't shut that door" or "don't you dare shut the door." Officer Tan then told Judge Shelton, "Judge, I can't shut the door." Regardless, the door was then closed when Judge Drinane finally left the courtroom.

Finally, on May 2, 2005, in an e-mail from Judge Drinane to Judge Shelton, Judge Drinane said, "I do apologize . . . you are right. I should not have walked into your courtroom." It is utterly unfair to Judge Shelton that the Commission, with a copy of this transcript having been provided to it by Judge Shelton, and her testimony regarding Judge Drinane's apology, continues to mischaracterize what actually occurred. *See also* Judge Shelton's testimony regarding her interaction with Judge Drinane. (*See* Investigation Hearing Transcript at 236-275.) The fact that the Commission's staff did not interview Judge Drinane suggests it was more interested in "piling on" to Quirk's complaints than achieving accuracy or context.

In addition, the Commission does not have jurisdiction to investigate complaints regarding a judge's alleged discourtesy to other judges, just as it lacks jurisdiction regarding court officers, because such behavior is not addressed by Section 100.3(B)(3) of the Rules Governing Judicial Conduct. *See supra* regarding Charge IV.

AS TO CHARGE VII

24. Denies the allegations of paragraph 24 of the Complaint.

25. Denies the allegations of paragraph 25 of the Complaint and alleges that the Commission has no jurisdiction to pursue Charge VII, which also fails to state a claim against Judge Shelton, for the following reasons:

Charge VII, too, is based on nothing more than gossip from court officers. Judge Shelton did not "slam the case file on a table" as the Commission now alleges out of thin air. (Complaint, ¶ 24.) In fact, Judge Shelton returned a file to Judge Cordova for which Judge Cordova was responsible, notwithstanding Judge Cordova's attempt to avoid her responsibility. The circumstances are as follows:

First, the incident that is the apparent subject of the complaint occurred in late October 2004, not May 2004 as the Commission originally asserted in reliance on the hearsay it had gathered.

Judge Shelton was the intake judge on October 27, 2004. At 5:10 p.m. on October 27th, Support Magistrate Fullwood, following a "willfulness" hearing, adjourned the matter to October 28, 2004 for intake confirmation by that day's intake judge, who was Judge Cordova. Judge Cordova, apparently laboring under a misapprehension that the matter belonged to the prior day's intake judge (Judge Shelton), had the file sent over to Judge Shelton's Part.

Judge Shelton's Senior Court Clerk, Mr. McFarland, sent the files back to Judge Cordova's Part. The files were then returned to him; he sent them back a second time to Judge Cordova's Part.

Later that morning on October 28, 2004, Judge Shelton was at her desk on the telephone in her robing room, the door to which was locked. Without so much as knocking on the door or

otherwise announcing themselves, Judge Cordova's court officer unlocked the door to Judge Shelton's robing room and entered with Judge Cordova. Judge Cordova stood over Judge Shelton, with the file in hand. Judge Shelton terminated her business-related phone call, asked Judge Cordova to "have a seat," and motioned to a chair. Judge Cordova remained where she was. Judge Shelton told Judge Cordova that the matter was hers, and that she was required to handle it. In a loud and angry tone, Judge Cordova said, "you don't want to discuss this?," to which Judge Shelton responded, "there is nothing to discuss." At that point, Judge Cordova slammed the file on Judge Shelton's robing room desk.

Shortly thereafter, Judge Shelton (without robes on) quietly entered the open side entrance to Judge Cordova's courtroom and unobtrusively placed the file on the table at the side, a few feet from the door, and left. Judge Shelton later asked Mr. McFarland to confirm that Judge Cordova or her clerk actually knew the file had been returned, as Judge Shelton had been so quiet that Judge Cordova may not have even realized it had been returned.

The Commission is referred to Judge Shelton's testimony regarding her interaction with Judge Cordova. (*See* Investigation Hearing Transcript at 275-294.) Once again, the Commission staff has not even bothered to interview Judge Cordova about this matter.[5]

In addition, the Commission does not have jurisdiction to investigate complaints regarding a judge's alleged discourtesy to other judges because, as discussed regarding Charges IV and VI, such behavior is not addressed by Section 100.3(B)(3) of the Rules Governing Judicial Conduct.

[5] Judge Shelton enjoys a cordial relationship with both Judges Drinane and Cordova.

AS TO CHARGE VIII

26. Denies the allegations of paragraph 26 of the Complaint, including to the extent that the Commission has wrenched otherwise accurately quoted words out of their context, thereby affecting their meaning and intent under the circumstances, as is more fully addressed below.

27. Denies the allegations of paragraph 27 of the Complaint, including to the extent that the Commission has wrenched otherwise accurately quoted words out of their context, thereby affecting their meaning and intent under the circumstances, as is more fully addressed below.

28. Denies the allegations of paragraph 28 of the Complaint and alleges that Charge VIII fails to state a claim against Judge Shelton for the following reasons:

It bears noting that the essence of the complaint by Dean Smith to the Commission is that Judge Shelton told him that he looked like a "f _ _ _ing street rat." This, as the Commission knows, is demonstrably false, *as the transcripts of the nearly three years this proceeding was before Judge Shelton confirm.* Yet, the Commission persists even though it knows Judge Shelton said no such thing and that Mr. Smith lied in his complaint.

This matter, involving Smith's petition for custody of his son, had been pending for 37 months before a Referee. It was transferred to Judge Shelton following Mr. Smith's complaints that it was moving too slowly. A mere sampling from the many hearings before Judge Shelton -- more than 20 over 32 months -- reveals Smith as a vexatious litigant intent on using the court as a forum to express his own idiosyncratic behavior, including repeated and unsuccessful attempts to provoke Judge Shelton and cause her to deflect her attention away from the critical relationship between Smith's son and his half-brother, a relationship which Smith refused to

nurture -- in violation of Judge Shelton's instructions and orders -- because of Smith's irrational animus toward the half-brother's custodians, as the examples below show. Despite all this and more, Judge Shelton was able to keep her eye on the only ball that mattered, the best interests of Smith's son, as she sought to guide Smith over time to help his son and assume the role of custodial parent:

- May 3, 2004
  Psychologist Dr. Scholler testifies to findings that Mr. Smith is unreliable, highly impulsive, with deficiencies in judgment; Mr. Smith argues that his son's maternal grandmother, who carried a portable oxygen tank and died a year later, is "intimidating" him.

- March 23, 2005
  Mr. Smith testifies that his son was conceived after a two-to-three month relationship between him and Marilyn Martinez, while she was living with Mr. Smith's cousin, Raoul Fair. Mr. Smith states: "People fool around" and "I felt relieved" when told "it's not yours."

- May 20, 2005
  Judge Shelton learns that the custodial grandmother died on May 15. Judge Shelton explains to Mr. Smith that he will have custody of his son (a last resort since Ms. Martinez was in prison), and advises him of the need to be sensitive to the effect on his son of being transferred from the only home he has known and from his half-brother, while suffering the loss of his grandmother, his "psychological" mother.

- May 24, 2005
  After dealing with Mr. Smith for over 18 months, Judge Shelton tells him how inappropriate it is for him to appear in court looking bizarre, explains that since Mr. Smith, the biological father, is capable of caring for his son, whose mother is incarcerated, Mr. Smith will get custody, and explains the transfer has to be done in the best way for the son and to maintain the brothers' relationship. Judge Shelton also responds to Mr. Smith accurately and directly -- after he claims his rights were denied for five years.

- May 26, 2005
  Judge Shelton implores Mr. Smith to put his differences with the late grandmother's significant other aside and work for the sake of his son's relationship with his half-brother, who is still in the custody of that significant other.

- September 7, 2005
  Judge Shelton addresses Mr. Smith's persistent refusal to follow her orders requiring visitation with the son's half-brother, underscores that she is "very serious about the relationship that these brothers are to have." And tells him his physical appearance in court is disrespectful. Akin to the paranoia he exhibited on May 3, 2004, Mr. Smith rambles about a lady who jumped out of a car cursing at him, other threats, and that "they are going to get someone to do me in."

- September 19, 2005
  Parties are again in court because Mr. Smith continues to violate the order of visitation. Judge Shelton tells him, as she has many times, not to appear in court "unshaven, looking like you have rolled out of bed again." Mr. Smith asks for the case to be returned to Referee Levy, lies about never having asked (two years earlier) for the case to be removed from the Referee, and alleges discrimination. Judge Shelton explains that telling him not to appear "like a slob" is not discrimination, and that his disrespect and flouting of court orders results in an impression that he is not doing a good job with his son.

- May 11, 2006
  Judge Shelton commends Mr. Smith for job he now appears to be doing with his son and makes a final order of custody in Mr. Smith's favor and a final order of visitation so the siblings' relationship can continue, *despite Mr. Smith's request for an adjournment to pursue "a lawsuit against the entire Family Court" he allegedly filed without his attorney's knowledge.*

Critically, there was a link, which Judge Shelton took pains to explain to Mr. Smith, between his disrespectful appearance (a continuing in-your-face attempt to provoke Judge

Shelton), and his flouting of her court orders regarding visitation.[6] Coddling Mr. Smith did not work, and was not in the best interest of his son, whereas challenging him and criticizing him, when appropriate, did, culminating in Judge Shelton's order in Mr. Smith's favor on May 11, 2006. Julian A. Hertz, Esq. and Aglaia Papadopoulos, Esq., two attorneys who appeared in the same proceeding as Mr. Smith, have attested to the propriety of Judge Shelton's conduct.

Mr. Hertz has been a member of the New York Bar for more than 50 years, and served as a judge of the Criminal Court from 1973 to 1979. He has more recently practiced as an 18-B lawyer primarily in Bronx Family Court. He states:

> Mr. Smith's personal appearance and dress were sometimes bizarre. He often appeared in court clothed in an unkempt fashion. His attendance in court supported the forensic evaluation of Dr. William Scholler, a clinical psychologist, whose testimony and report was that Dean Smith was a "highly impulsive individual with deficiencies in judgment," that he suffered from "hypomania" (a condition just "short of mania"), that his "underlying problems with anger and irritability" were "recurrent," that "he could react with a quick temper to frustrations of his immediate wishes," and that his condition was characterized by "poorly thought-out ... action," failure to "take sufficient account as to possible adverse consequences," and a "feeling of grandiosity."
>
> Despite these inanities and limitations, Judge Shelton maintained an entirely judicial demeanor. She did, in this case and in so many other cases where I was present representing a party or child, always keep in mind the welfare of the child, patiently steering the proceedings to that end and dealing firmly and fairly with the parties. In Smith's case, she sought to concentrate his basic self-involvement upon what was occurring, and to remind him that the focus of the proceeding was his son. Her language was always appropriate to the situation, being designed to communicate reality to Mr. Smith rather than his "different" world. Although, in addition to Dean Smith, all of the witnesses had issues, Judge Shelton treated everyone courteously.

[6] Mr. Smith knew how to present an appropriate appearance, underscoring that his conduct and appearance before Judge Shelton was deliberate. As the forensic psychologist reported regarding *his* meeting with Mr. Smith, "[h]e dressed neatly and conservatively...."

The Commission knows or should know that this matter is not worthy of pursuing. The proceeding in which Mr. Smith was involved spanned the period from August 2000 through May 2006. The record of that proceeding reflects that Mr. Smith, who habitually ignored Judge Shelton's orders, was found by a court-appointed psychologist to be unreliable and highly impulsive, with deficiencies in judgment. Dr. Scholler, the forensic clinical psychologist who examined Mr. Smith, referred to his "impulsivity" as "reaching hypo-manic proportions;" referred to his "[u]nderlying problems with anger and irritability" as "recurrent," and that "he could react with a quick temper to frustrations of his immediate wishes." Yet, as Judge Shelton was about to (and did) make a final order of custody in his favor, *Mr. Smith, as noted above, unsuccessfully attempted to halt the proceeding purportedly to pursue "a lawsuit against the entire Family Court.*" (Emphasis added.)

AS TO CHARGE IX

29. Denies the allegations of paragraph 29 of the Complaint to the extent the Commission has wrenched otherwise accurately quoted words from an earlier proceeding date out of their context, thereby affecting their meaning and intent under the circumstances, as is more fully addressed bellow.

30. Denies the allegations of paragraph 30 of the Complaint, including to the extent that the Commission has wrenched otherwise accurately quoted words out of their context, thereby affecting their meaning and intent under the circumstances, as is more fully addressed below.

31. Denies the allegations of paragraph 31 of the Complaint and alleges that the Commission has no jurisdiction to pursue Charge IX, which also fails to state a claim against Judge Shelton for the following reasons:

The Commission's staff questioned Judge Shelton about a proceeding in this then ongoing matter that occurred on June 10, 2005. Felicia Barnes did not complain to the Commission until 14 months later, and did so only because she had become concerned that the matter was not going well for her. Since she asked to "have Judge Marian Shelton recused [by the Commission] from my Family Court visitation case . . . ," her complaint was a disguised recusal motion; indeed, it was a direct effort by a litigant with a distorted view of reality -- as determined by two experts and discerned by Judge Shelton.

The reports of those two experts show how perceptive Judge Shelton was in dealing with an extreme case of alienation by Ms. Barnes, who was intent on thwarting any relationship between her son, Chad Malik Barnes, and his father, Chad Hughes.

Dr. William Scholler, a forensic clinical psychologist, had this to say about Ms. Barnes:

- Although the respondent [Ms. Barnes] did not present with major mental illness, the psychological testing profile identified a capacity in the respondent when she felt threatened for severe distortions in perception and judgment consistent with the "transitory hysterical psychotic episodes."

- The respondent directly or indirectly communicated a degraded perception of the petitioner [Mr. Hughes] to the child, causing the child to become acutely symptomatic, fearful and physically distressed in the father's presence.

- The respondent's unremitting antipathy toward the petitioner was expressed calmly and with minimal emotion.

- Until the petitioner's parole in 2003, the child believed his common-law-step-father was his biological father. The respondent conceded that she allowed the child to be misled with regard to his pedigree because "I did not know how to tell him." Within 6 months of the father's petition for visitation in August 2004, the respondent changed the child's legal name, asserting that the child was "upset that Chad was in his name."

- Asked if in her view there was anything worthwhile about the petitioner at all, the respondent answered in the negative insisting "I do not see redemption in him."

- The respondent described acute symptoms of Oppositional Defiant Disorder as a teen. She was sexually active at 13, dropped out of school in the 10th grade and was pregnant with the subject-child at 16. She misrepresented her age to the petitioner, and was largely undomiciled during her pregnancy with the subject child. She did not receive reliable prenatal care for the infant. She lived with adult strangers as a pregnant 16 year old.

- The respondent was described on testing as responding "to[o] positively" to many of the MMPI items "as part of an intentional effort to look good." The mother's "engrained properness" and "strict self-control" were noted on testing. The respondent was observed to "minimize short comings and limitations in herself, righteously reacting as though everyone somehow ought to be much more virtuous than they are."

- The respondent displayed an exaggerated avoidance of the petitioner's involvement with his son. The respondent lacked insight into her indirect but profound influence over the child's symptomatic distress and complete rejection of contact with his father.

Stuart J. Levinson, JD, I. SCW-PR, ACSW, (an attorney, social worker, and psychotherapist), stated as follows in the "summary and recommendations" section of his report, following a series of therapeutic visits:

> The BM [biological mother] comes across as very self-assured, totally self-serving in her sense of knowing what [the child] wants (also apparently what she really wants), and committed in her views of Jeffrey Hart as [the child's] "daddy," and Mr. Hughes, the biological father, as some kind of interloper who has less of a say in this matter than [the child], his 11 year old son. I still feel that if the mother and Jeffrey Hart, who needs to explain that he is not [the child's] "daddy," presented a unified front when explaining the value in and necessity for [the child] to have visits with his biological father, he would become more receptive to it and ultimately accept it as a necessary reality.

It is in this context that Judge Shelton's colloquy with Ms. Barnes should be viewed, including when Judge Shelton told Ms. Barnes that:

- You set this up as if this is his [Mr. Hughes'] fault. * * * You had a baby with him. You decide today to live your life as a lie and pretend it didn't happen.

- You're living in a fairy tale. [Mr. Hart] is not your child's biological father.

- [Judge Shelton, aware that Ms. Barnes had even concealed the existence of Mr. Hughes from their son's school states:] Further, you are directed to inform this child's school that Mr. Hughes exists. That you are not the sainted person that you present to the child's school. That you have a history with a convicted felon who -- with whom you had a child, probably had some good wild dates [sic; should read "days"] in your past. So what? Who cares?

As the experts' reports, discussed above, show, it was necessary for Judge Shelton to explain to Ms. Barnes that the existence of Mr. Hughes was not something to be ashamed of or embarrassed about, and that no one was looking down on her because of anything that had occurred in her past. As Judge Shelton put it: "So what? Who cares?"

Only someone reviewing this record with a distorted perspective, like Ms. Barnes, or without objectivity, like her attorney, could conclude that Judge Shelton was insulting Ms. Barnes. Clearly, Judge Shelton's focus was to help the child -- whose interests were of paramount importance -- to develop a healthy relationship with both parents, something Ms. Barnes was trying to thwart. A less discerning and caring judge would never have given the father, who had been rehabilitated after years of incarceration, such a chance, *which both experts confirmed in the foregoing reports that he deserved.*

Moreover, the Commission's investigation of and insistence that Judge Shelton answer questions regarding the purported complaint from Ms. Barnes and her lawyer, Bernadette Smith,

in a case then pending before Judge Shelton contravenes the very canons and rules of judicial conduct that the Commission purports to be upholding.[7]

Canon 1 of the Code of Judicial Conduct provides that "a judge should uphold the integrity and independence of the judiciary" because "an independent and honorable judiciary is indispensable to justice in our society." The Code further instructs that "[t]he provisions of this Part 100 are to be construed and applied to further that objective." The commentary to Canon 1 eradicates any doubt as to whether an "independent" judge means one who can decide his or her cases without fear or favor. The commentary expressly explains that "[d]eference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. *The integrity and independence of judges depends in turn upon their acting without fear or favor.*"[8]

If the Commission initiates an investigation based on a complaint from a litigant or attorney who is not satisfied with a judge in a pending case, is not the Commission encouraging such complaints and creating the very fear that destroys an independent judiciary? It is not as if a disgruntled litigant or lawyer has no other recourse. Just the opposite, a litigant concerned about bias on a judge's part can -- and should -- move to have the judge recuse him or herself. Ms. Barnes' lawyer, Bernadette Smith, certainly knew that; her September 5, 2006 letter to the Commission states that "I plan to file a motion requesting that Judge Shelton recuse herself from the case." But she did not. Why should she? She had the Commission plunging its monkey wrench into the machinery of the case, effectively taking her side.

---

[7] (*See, e.g.,* 2006 Annual Report, at 54 ("Standards of conduct are set forth primarily in the Rules Governing Judicial Conduct . . . and the Code of Judicial Conduct. . . .")

[8] Code of Judicial Conduct, Commentary 1.1. (Emphasis added.)

AS TO CHARGE X

32. Denies the allegations of paragraph 32 of the Complaint.

33. Denies the allegations of paragraph 33 of the Complaint and alleges that the Commission has no jurisdiction to pursue Charge X, involving privileged communications between judges, which also fails to state a claim against Judge Shelton for the following reasons:

There is no allegation that Judge Shelton was not present at the courthouse on February 1, 2006, or that she was not otherwise working there. She was. There is also no good-faith basis for the Commission to allege that Judge Shelton defied a "directive" of her Supervising Judge, Hon. Clark V. Richardson. She did not. Why would the Commission even pursue this isolated incident, regardless of its falsity, in the face of case law (*see infra*) requiring that such conduct be persistent, but for its attempt to add this type of conduct to its mélange of complaints? And why not talk to Judge Richardson about what really happened, rather than accepting gossip from a court officer?

As Judge Shelton testified during the "investigation" of this Charge, her long-time court officer, Atiba DiSousa, was arbitrarily removed from her Part that day in a retaliatory strike by Quirk over the "incident" involving Officer Smith the day before. Judge Shelton found out about this at approximately 11:00 a.m., while she was *on* the bench, when Officer DiSousa -- obviously distressed -- informed her of his unwelcome transfer that morning, of which he had no warning. As Judge Shelton also testified, she was both angry at Quirk and upset for Officer DiSousa. She did not think it prudent to remain on the bench that day, and elected instead to work in her robing room. Judge Shelton was not directed by her Supervising Judge to resume the bench and, accordingly, did not defy any such directive.

The Commission apparently relies on the *Matter of Reeves*, 63 N.Y.2d 105, 107, 480 N.Y.S.2d 463, 463-64 (1984). But *Reeves* is nothing like this case, and not merely because Judge Shelton did not refuse to work and is not alleged to have refused to work. In *Reeves*, the allegations were:

> that petitioner failed over a three-year period to properly perform his judicial duties and engaged in a course of conduct prejudicial to the administration of justice. Among the counts were charges that: petitioner directed a court clerk to falsify court reports filed with the Office of Court Administration; he failed to properly advise litigants of their rights; he failed to require litigants to submit sworn financial disclosure statements as required by law; he entered dispositional orders in cases in which the court lacked jurisdiction over the respondents; he initiated an improper ex parte communication concerning a pending case; he refused to allow an attorney to appear in his court; and he refused to work for two days because of an alleged shortage of staff.

Id. at 107, 480 N.Y.S.2d at 463-64.

Moreover, assuming *arguendo* the truth of the Commission's allegations and its authority to pursue them, where is there here, unlike the conduct in *Reeves*, even a hint of anything persistent? There is none.

So too, in *In re Lenney,* 71 N.Y.2d 456, 458, 527 N.Y.S.2d 193, 194 (1988), there was a "persistent and pervasive pattern of neglect of judicial and administrative duties." The Court of Appeals carefully distinguished that case -- where a judge, for example, had failed repeatedly timely to submit required court reports -- from cases where, as here, the Commission might intrude improperly into "matters of internal court administration." *Id.* at 459, 527 N.Y.S.2d at 194. The Court of Appeals has further expressed concern about such unwarranted intrusion by the Commission in *Matter of Greenfield,* 76 N.Y.2d 293, 298, 558 N.Y.S.2d 881, 883 (1990): "[i]n our view a clearer line must be drawn between the role of the Commission and court administrators [regarding the Commission's jurisdiction over administrative matters] . . . in order

to avoid confusion and provide adequate notice to members of the judiciary . . . ." In view of the isolated nature of the alleged incident here, even apart from its falsity, there is no basis for the Commission to pursue this complaint.

AS TO CHARGE XI

34. Denies the allegations of paragraph 34 of the Complaint, including to the extent the Commission has wrenched otherwise accurately quoted words out of their context, thereby affecting their meaning and intent under the circumstances, as is more full addressed below.

35. Denies the allegations of paragraph 35 of the Complaint and alleges that the Commission has no jurisdiction to pursue Charge XI, which also fails to state a claim against Judge Shelton for the following reasons:

We doubt that the Commission could find an example of an attorney more out of control than Sandra Prowley, Esq. in *Matter of Solomon.* On occasion after occasion, Judge Shelton gave Ms. Prowley an opportunity to extricate herself from a situation that Ms. Prowley kept making worse and worse. As shown below, Judge Shelton made multiple requests -- at least six times in a few minutes -- that Ms. Prowley "be quiet and sit down" because of Ms. Prowley's repeated outbursts, some of which follow:

> Ms. Prowley: I need to rebut what you just said. *Are you going to throw me out, too?*
>
> THE COURT: I will if you are fresh.
>
> Ms. Prowley: *Please do so.*
>
> * * *
>
> Ms. Prowley: I don't know, your Honor, what *you need to really check your personality. You really need to.* If you want to throw me in contempt of court based on that, I don't think it's fair.

THE COURT: I tend not to put into jail people that are mentally ill.

Ms. Prowley: See, now, your Honor, there is nothing wrong with me mentally.

THE COURT: Thursday --

Ms. Prowley: I don't take mental drugs.

THE COURT: *Counsel be quiet and sit down.*

Ms. Prowley: I don't appreciate --

THE COURT: *Counsel be quiet and sit down.*

Ms. Prowley: I have a mental problem? I do not have a mental problem, *you have a mental problem.*

THE COURT: *Be quiet and sit down, counsel.*

Ms. Prowley: Do not say I have a mental problem, that is not appropriate.

THE COURT: *Let's begin with your conduct, all right, you are a lawyer in my courtroom, I just removed your client from my courtroom because he is rude and disrespectful and speaks over me. I am trying to issue an order, I am in the middle of a sentence when you interrupt me. And I tell you not to speak and to sit down, you then go off on a riff where you tell me that I have to check my personality, how dare you, amongst all the other things you have stated on the record. It is not going to happen here.* If you continue to do that, I'm going to take this transcript and I'm going to send it to the ethics committee.

Now, he will call you -- be quiet, counsel. Be quiet. Send her out of the courtroom now. Out.

Ms. Prowley: I need to reply to that, this is not fair to my client.

THE COURT: *If you would listen and be quiet you might be heard.*

Ms. Prowley: You will not hear my argument, he has an argument too.

THE COURT: Your argument would be heard if you would be quiet and listen to what I was saying before your argument was heard.

(At this time, Ms. Prowley leaves the courtroom).

(Emphases added.)

If anything, Judge Shelton was restrained in relation to the degree and extent of Ms. Prowley's contumacious conduct.

The Law Guardian for the child, Daniel A. O'Connor, supported the manner in which Judge Shelton handled the proceedings in question on October 27, 2005. As Mr. O'Connor stated, in an Affirmation dated November 30, 2005:

> That during the discussion of the visits the mother indicated that the father missed one visit and that he calls at the last minute as to when he is coming. Since the visits are different each time depending on his work schedule this was discussed. The Court was in the process of setting a time for him to call a couple of days in advance of the scheduled visit for him to notify the mother which of the visitation schedule (which depended on his work schedule). This lead to MR. SOLOMON interrupting and being told by the Judge to stop talking. This happened at least twice and later when the Court asked him a question *in a sarcastic tone he asked the Judge may I speak NOW.* (Emphasis added except capitalization of word "Now" in original.)
>
> He was ejected.
>
> That thereafter when the court was telling MS. PROWLEY about his calling in advance MS. Prowley interrupted and talked over the Judge.
>
> That when reminded that this was not proper conduct, MS. PROWLEY again started to interrupt the Judge. I do not remember the Judge's exact words, but what she said clearly was a warning to MS. PROWLEY that her conduct was improper and implied sanctions would be imposed. When MS. PROWLEY again talked over the Judge, she was put out of the Court, and MR. SOLOMON was brought back. The schedules that were previously discussed were ordered and the case was adjourned.
>
> That Judge SHELTON acted properly in my opinion, as I sat there I was think if I were the Judge I would have held MS. PROWLEY in contempt.
>
> That MS. PROWLEY'S conduct was bizarre to say the least, and it would lead any reasonable observer to question if she were in control of her emotions and the Judge's musing whether she had mental problems was not an unreasonable question.[9]

[9] Mr. O'Connor has explained that through inadvertence this sentence originally read "not a reasonable question" when he intended to say what is stated above.

The Commission also lacks jurisdiction with respect to this ongoing matter, having no right to embark on a veritable fishing expedition by combing through transcripts of proceedings in the absence of complaints about them. There is no complaint regarding the matter in which Ms. Prowley was involved, including the transcript about which the Commission, by letter, announced its intent to "inquire" at Judge Shelton's next appearance during the investigation phase of this proceeding.

It bears noting that the Commission is permitted access to papers in a family court proceeding, including "transcribed minutes of any hearing held in the proceeding," upon application to the appropriate Deputy Chief Administrator "containing an affirmation that the [C]ommission is inquiring into a complaint under article 2-A of the Judiciary Law...." N.Y.S. Family Court Uniform Rules § 205.05 (5)(c).

A complaint in one proceeding does not give the Commission license to rummage through the files of hundreds of other proceedings -- or even through the file of one unrelated proceeding -- as it fishes for similar misconduct. There is no statutory authority for the Commission to do so, and such a fishing expedition is not sanctioned by applicable law.

Where is the Commission's affirmation, as part of its application to the Deputy Chief Administrator, that the Commission required access to the *Solomon* proceeding, in order to obtain transcripts from that proceeding, because the Commission was "inquiring into a complaint" under article 2-A of the Judiciary Law? Judge Shelton doubts that the Commission can supply such an affirmation, and certainly not one identifying a complaint regarding the *Solomon* matter or Ms. Prowley.

While the Commission's staff may wish to avoid abiding the receipt of actual complaints or seeking the Commission's authorization of Administrator's complaints, the rules requiring

them exist for the compelling reason of ensuring due process, which Judge Shelton is being denied as the Commission has tossed transcripts at her without benefit of a complaint.

Going, 97 N.Y.2d at 124-25, 735 N.Y.S.2d at 895-96, further confirms Judge Shelton's position:

> The record does not reflect how this matter came to the attention of Commission Counsel during the course of its investigation. However, when Commission Counsel became aware of it, he notified petitioner that he intended to question him about the matter. The Commission did not attempt to expand its investigation exponentially by seeking to inquire about broad categories of conduct without a factual basis for inquiry. While this conduct may well have required a second "complaint" pursuant to the Judiciary Law, petitioner's after-the-fact challenge to the scope of the inquiry at his initial appearance was waived by his failure to object to it.

The record here also does not reflect how the matter of the *Solomon* transcript came to the attention of Commission counsel; but unlike *Going*, Judge Shelton's challenge to the Commission's attempt to inquire about that matter without benefit of a complaint -- which the Court of Appeals opined in *Going*, 97 N.Y.2d at 125, 735 N.Y.S.2d at 896, "may well have [been] required" -- was *not* after the fact but, rather, timely, as it preceded any inquiry about it.

AS TO CHARGE XII

36. Denies the allegations of paragraph 36 of the Complaint to the extent the Commission has wrenched otherwise accurately quoted words out of their context, thereby affecting their meaning and intent under the circumstances, as is more fully addressed below.

37. Denies the allegations of paragraph 37 of the Complaint and alleges that the Commission has no jurisdiction to pursue Charge XII, which also fails to state a claim against Judge Shelton for the following reasons:

As to context, the man -- Donald Washington ("Washington') -- in the *Ruiz v. Washington* proceeding, a documented batterer of the mother of his child, was harassing her as

the parties were waiting for the calendar to be called, despite an Order of Protection previously having been issued in her favor and against him. Washington had also made a threatening telephone call to her, of which there is a recording that is also utterly profane. And Washington was refusing to attend an anger management course, despite Judge Shelton's prior order that he do so. The terror inspired by Washington's phone call is only suggested by the transcript of his own words provided by Judge Shelton to the Commission's staff. The full horror of it can only be appreciated by listening to the tape recording itself.

As the transcript of this proceeding improperly commandeered by the staff shows, (*see infra* regarding the staff's disregard of N.Y.S. Family Court Uniform Rules § 205.05 (5)(c) in this matter as in the *Solomon* matter involving Ms. Prowley), the proceeding was moving along on the day in question, following the waiting-area incident, when Washington misrepresented certain facts and professed not to understand "why I got to be punished for something that she," the mother of his child, "feels." Judge Shelton, in possession of pictures showing the beating he gave her and the tape of his profane, threatening phone call, explained that the answer to the question "why" was that he is "a pig because you beat the mother [of your son]."

It is not an understatement that Judge Shelton was the last line of defense between Washington and Ms. Ruiz, who was cowering in court from fear and who may have been saved from additional harm when Judge Shelton resorted to the highly-regarded technique of confronting and controlling Washington, thereby redressing the power balance that this wife batterer had tried to distort. As the Commission's Chairman, Raoul Felder, has written in "Getting Away With Murder," "it is crucial to remember that victim safety must come before anything else," also warning that the rights of the perpetrator should not be "put before the most important rights of the victim, which are to live without fear and free from harm."

The transcript of the recorded telephone message referred to above shows why Judge Shelton called Washington "a pig," not gratuitously but for the purpose of stopping him in his tracks and preventing him from harming Ms. Ruiz. The recording begins with Washington telling Ms. Ruiz "you're all f _ _ _ ed up." He then threatens her life, telling her, "you know what? Watch, if I ever catch you with him, [referring to another man], together mother f _ _ _ er I'm gonna kill both y'all."

The Commission is permitted access to papers in a family court proceeding, including "transcribed minutes of any hearing held in the proceeding," upon application to the appropriate Deputy Chief Administrator "containing an affirmation that the [C]ommission is inquiring into a complaint under article 2-A of the Judiciary Law...." N.Y.S. Family Court Uniform Rules § 205.05 (5)(c). Where is the Commission's affirmation, as part of its application to the Deputy Chief Administrator, that the Commission's staff required access to the *Ruiz v. Washington* proceeding, in order to obtain transcripts from that proceeding, because the Commission was "inquiring into a complaint" under article 2-A of the Judiciary Law? Without such an affirmation *and* a complaint, the Commission does not have jurisdiction to pursue this Charge, which also involves an ongoing matter.

AS TO CHARGE XIII

38. Denies the allegations of paragraph 38 of the Complaint.

FIRST AFFIRMATIVE DEFENSE
[Lack of Subject Matter Jurisdiction]

39. As described above with respect to the individual charges, the Commission does not have subject matter jurisdiction over Charges III, XI and XII because there is no complaint, signed or otherwise, by anyone, in contravention of Title 22 NYCRR § 7000.2.

SECOND AFFIRMATIVE DEFENSE
[Lack of Subject Matter Jurisdiction]

40. As described above with respect to the individual charges, the Commission does not have subject matter jurisdiction over Charges IV, VI, VII and X, because it does not have jurisdiction to investigate complaints regarding a judge's alleged discourtesy to court officers or other judges and regarding privileged communications between judges.

THIRD AFFIRMATIVE DEFENSE
[Lack of Subject Matter Jurisdiction]

41. The Commission does not have subject matter jurisdiction over Charge IX because, as described above, Ms. Barnes' letter was not a "complaint," but rather a motion for recusal, which should have been made to Judge Shelton.

FOURTH AFFIRMATIVE DEFENSE
[Violation of Constitutional Right to Due Process]

42. The New York State Commission on Judicial Conduct Operating Procedures and Rules, Title 22 NYCRR Part 7000 (the "Rules"), are inherently unfair and grossly prejudicial to the Judge.

43. Specifically, § 7000.6, entitled "Procedure upon a formal written complaint," places Judge Shelton at such an extreme disadvantage as to provide her with virtually no hope of obtaining a fair and impartial review.

44. For instance, under § 7000.6 (b), Judge Shelton must answer within 20 days, whether or not she moves to dismiss the complaint. The standard practice in both New York state and federal court -- and in virtually all courts around the country -- is that a defendant who moves to dismiss a complaint is relieved of the obligation of answering until the motion is

decided. The Commission's requirement that a judge must answer prior, and in addition, to moving to dismiss, places an unreasonable and undue burden on the judge. It also would appear to presume that an answer will be required in any event because a judge has no chance of succeeding on a motion to dismiss before the Commission.

45. Under § 7000.6 (f), the Commission decides all motions to dismiss and for summary determination. The notion that a litigant would have any chance of successfully moving to dismiss or obtaining a summary adjudication of charges before the same tribunal that leveled the charges is patently absurd. Even more absurd is that *both parties* have the right to move for summary determination before the Commission. Thus, the Commission has the right to make a motion for summary determination to *itself*, which motion *it* will then decide.

46. Rule 7000.6 (f)(3) provides that

> [i]n deciding a motion, the commission members shall not have the aid or advice of the administrator or commission staff who has been or is engaged in the investigative or prosecutive functions in connection with the case under consideration or a factually related case.

If nothing else, it is notable that the Commission has to institute a rule that when deciding certain matters (and only those matters) the tribunal is to refrain from seeking the assistance of its own advocate. This implies that in all other matters not expressly identified, the Commission *can* obtain assistance from its own advocate.

47. Under § 43 of Article 2-A of the Judiciary Law, the Commission is not required to preside over the hearings. It is a great disservice to Judge Shelton that the Commissioners, in making decisions that have the potential to ruin her career and reputation, are not required to be physically present at the hearings at which the parties' evidence will be presented. Instead, the Commission may designate a referee to hear and report. And the only requirements for the Commission's hand-picked designee are that the referee be a member of the bar, but not a judge

or a member of the Commission. Although Judge Shelton has the right to ask the referee to disqualify himself or herself, any appeal from the referee's decision regarding disqualification is made to the Commission. Thus, even if the referee grants the Judge's disqualification motion, the Commission can simply appeal -- to itself -- and overturn the referee's decision. And any appeal by the Judge for the Commission to disqualify its own hand-picked candidate is, of course, a sure loser.

48. Under § 7000.6 (h)(1), the Commission need not make its documents, exculpatory evidence and written statements available to the Judge until ten days before the hearing. This is an unreasonably short time frame for any litigant, much less a sitting Judge, to review and prepare to defend herself against what are extremely serious charges. There is absolutely no justification for denying the Judge a reasonable time period in which to receive the documents prior to the hearing. This rule is particularly troublesome because Judge Shelton has learned that the Commission has a propensity to pad its witness list with witnesses it does not intend to call and load its production with, and "dump" on the Judge, irrelevant documents that the Commission does not intend to use in an effort to make it virtually impossible for the Judge properly to prepare.

49. Section 7000.6 (h) underscores the extent to which the rules favor the Commission and are potentially prejudicial to Judge Shelton. Under § 7000.6 (h)(1), "[T]he failure of the commission to furnish timely any documents, statements and/or exculpatory evidentiary data and material provided for herein shall not affect the validity of any proceedings before the commission, provided that such failure is not substantially prejudicial to the judge." Presumably, the Commission determines whether its own failure is "substantially prejudicial" to the judge. This rule would be more palatable, perhaps, if the judge also received the benefit of it.

But the Judge's disclosure obligations under § 7000.6 (h)(2) are absolute, with no relief for failures under any circumstances, whether or not they may be "substantially prejudicial" to the Commission.

FIFTH AFFIRMATIVE DEFENSE
[Violation of Constitutional Right to Due Process]

50. The Commission has consistently acted arbitrarily and capriciously toward Judge Shelton, denying her fundamental due process. After receiving Quirk's letter, the Commission rounded up additional "complaints," trolling among court personnel for gossip and relying on unsigned and unsubstantiated allegations. The Commission's use of questionable means to justify a pre-determined end is a blatant abuse of due process.

51. The Commission's arbitrary and capricious behavior continues into the Complaint stage. The Commission has denied the modest adjournments which Judge Shelton's counsel requested for his time to answer the Complaint and make a motion to dismiss. Robert Tembeckjian has confirmed the Commission's desire to rush to judgment in his recent letter indicating that he would have "granted" the adjournments but for the fact that Judge Shelton's term expires on December 31 of this year. The Commission's admitted desire to exact punishment on Judge Shelton even though she will only be on the bench for a few more months underscores the arbitrary and capricious nature of this proceeding.

SIXTH AFFIRMATIVE DEFENSE
[Violation of Constitutional Right to Due Process]

52. Under well established principles of due process, Judge Shelton is entitled to notice of the charges against her. Charge IV, which does not even contain the name of the officer at issue, is so vague as to provide no notice whatsoever.

SEVENTH AFFIRMATIVE DEFENSE
[Procedural and Substantive Taint]

53. Between February 2006 and July 2006, Raoul Felder, a member of the Commission and its Chair, participated in six votes by the Commission authorizing its staff to investigate Judge Shelton in connection with the Charges that are now the subject of the Complaint. Mr. Felder voted on each occasion in favor of an investigation. He then recused himself from further matters regarding the investigation of Judge Shelton due to a conflict of interest pre-dating the first vote. According to the Commission's Administrator, Robert Tembeckjian, Mr. Felder did not "participat[e]" in the two additional votes, in October 2006, that, with the six earlier votes in which Mr. Felder did participate, have culminated in the Charges that are set forth in the Complaint. The Commission's vote to proceed with those Charges against Judge Shelton was taken on May 10, 2007.

54. On April 13, 2007, the members of the Commission expressed a loss of confidence in Mr. Felder for repeatedly invoking racial, ethnic and religious invective which undermines the perception that the Commission's decisions are fair and impartial and not driven by anyone's biases, and concluded that they were exploring their options of removing him as Chair.

55. On May 16, 2007, six days after the Commission's vote to bring charges against Judge Shelton, the *New York Law Journal* quoted Mr. Felder as follows: "I remain as Chairman ... having just presided over last week's meeting...."

56. From the inception of the Commission's authorization of the investigation of Judge Shelton, at its earliest stages and through the filing of Charges against her in the Complaint, this proceeding has been tainted, both procedurally and substantively, by Raoul Felder's involvement.

EIGHTH AFFIRMATIVE DEFENSE
[Failure to State a Claim]

57. The Commission initiated its investigation of Judge Shelton as a result of Quirk's letter, which was based on eight vague, hearsay "complaints," only one of which has even survived the investigation phase. In the absence of such allegations, which have since been exposed as illusory, the Commission would never have proceeded. Given that the underlying premise for launching the Commission's investigation was baseless, the Complaint is without merit and should be withdrawn.

NINTH AFFIRMATIVE DEFENSE
[Failure to State a Claim]

58. Judge Shelton has been a jurist for nine years and has handled more than 40,000 cases, serving and protecting for many years the residents of Bronx County. The Commission's 12 flawed Charges do not constitute "habitually intemperance," either on their face or under Commission precedent.

59. Referenced below is merely a representative sampling of compliments Judge Shelton has received from the litigants who come before her, which she previously provided to the Commission.

- Letter from a mother thanking Judge Shelton "for being fair and especially kind," and for instilling "a new found respect for Judges in Family Court . . . ."
- Pictures of Judge Shelton and children to whom Judge Shelton gives stuffed animals and other gifts at an adoption proceeding.
- Picture of Judge Shelton with a parent and children at an adoption proceeding, including mother's note thanking her "for making this family one."
- Note from a former Legal Aid attorney thanking Judge Shelton for her "wisdom and compassion for our families."

- Father's note thanking Judge Shelton "for all that you've done for me and my son," stating "without your help and support it would've never been possible."

- Mother's note thanking Judge Shelton for "putting light back into my daughter's eyes," and thanking me "for hearing, listening & being so wise and just."

- Picture from child with note to Judge Shelton that "You're the best Judge I ever had. Thank you for the frog and lamb. Love, R."

- Page from transcript where a mother says, "My husband and I would really like to thank you for all you [have] done. Without you none of this would have been accomplished and I really truly believe you work on behalf of the child, not me, not the law guardian, not the parents, but for the child and for the benefit of the child and I thank you for that."

- Page from transcript where a litigant says, "You have been great to me . . . . you make the effort and you work so hard . . . ."

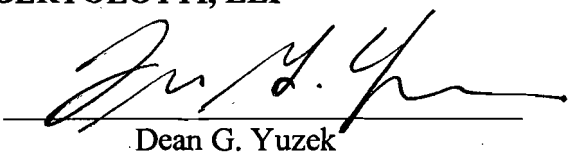
- Note to Judge Shelton from child and father: "Thank you again for your wisdom in my behalf. Thank you for fairness and trust."

60. The foregoing ten items could be multiplied by ten, and then multiplied again. The only thing "habitual" about Judge Shelton as a jurist is her compassion. And the only conduct here prejudicial to the administration of justice is that of the Commission, which is forcing Judge Shelton to divert her time away from serving the Bronx community.

WHEREFORE, Judge Shelton demands the dismissal of all of the charges set forth in the Complaint.

Dated: June 25, 2007

INGRAM YUZEK GAINEN CARROLL & BERTOLOTTI, LLP

By: 

Dean G. Yuzek
Attorneys for Hon. Marian R. Shelton
250 Park Avenue
New York, NY 10177
(212) 907-9600

VERIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

MARIAN R. SHELTON, being duly sworn, deposes and says:

I am the respondent herein and reside in New York, New York. I have read the foregoing Verified Answer To Formal Written Complaint and know the contents thereof. The same is true to my own knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

MARIAN R. SHELTON

Sworn to before me this
25th day of June, 2007

Notary Public

PATRICIA HEWITT
Notary Public, State of New York
No. 02HE5023170
Qualified in New York County
Commission Expires January 31, 2010