



JACKSON WALKER L.L.P.  
ATTORNEYS & COUNSELORS

Kurt A. Schwarz  
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kschwarz@jw.com

June 24, 2009

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**VIA HAND DELIVERY**

Seana Willing  
Executive Director  
State Commission on Judicial Conduct  
300 West 15<sup>th</sup> Street, Suite 415  
Austin, Texas 78701

Re: *In re: The Honorable Sharon Keller, Presiding Judge of the Texas Court of Criminal Appeals, Austin, Travis County, Texas*  
Before the Commission on Judicial Conduct

Dear Ms. Willing:

Enclosed please find a original and two copies of Respondent's Motion to Strike First Amended Notice of Formal Proceedings, Motion to Show Authority, and Brief in Support in the above-referenced matter. Please file the Motion and return a file-marked copy to me in the stamped and self addressed envelope enclosed.

If you have any questions, please give me a call.

Sincerely,

Kurt Schwarz

KAS:lb

Enclosure

cc: (with enclosures)  
*Via Fax: 210-335-0595*  
Judge David A. Berchelmann, Jr.  
37<sup>th</sup> District Court  
Bexar County Courthouse  
100 Dolorosa, Suite 209  
San Antonio, Texas 78205

901 Main Street, Suite 6000 • Dallas, Texas 75202 • (214) 953-6000 • fax (214) 953-5822

**Seana Willing**  
**June 24, 2009**  
**Page 2**

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**Mr. John J. McKetta, III**  
**Graves Dougherty Hearon & Moody**  
**401 Congress Ave., Suite 2200**  
**Austin, Texas 78701**

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JUN 24 2009

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INQUIRY CONCERNING JUDGE,  
NO. 96

IN RE:

THE HONORABLE SHARON KELLER,  
PRESIDING JUDGE OF THE TEXAS COURT  
OF CRIMINAL APPEALS, AUSTIN, TRAVIS  
COUNTY, TEXAS

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BEFORE THE  
COMMISSION ON  
JUDICIAL CONDUCT

**RESPONDENT, THE HONORABLE SHARON KELLER'S MOTION TO  
STRIKE FIRST AMENDED NOTICE OF FORMAL PROCEEDINGS,  
MOTION TO SHOW AUTHORITY, AND BRIEF IN SUPPORT**

**TO THE STATE COMMISSION ON JUDICIAL CONDUCT:**

The Honorable Sharon Keller ("Respondent") submits her Motion to Strike the First Amended Notice of Formal Proceedings as follows:

**I. FACTS.**

1. On February 19, 2009, Examiner Seana Willing (the "Examiner"), on behalf of the State Commission on Judicial Conduct ("Commission"), filed a Notice of Formal Proceedings (the "February 19 Notice") against Respondent, alleging that by correctly answering a question posed by the General Counsel of the Texas Court of Criminal Appeals, Respondent committed five chargeable offenses under the Texas Constitution and the Canons of the Texas Code of Judicial Conduct. The February 19 Notice was filed following the submission of a verified statement alleging misconduct by Respondent, and a full investigation of the facts alleged in that statement by the Commission.

2. Respondent filed her Verified Answer on March 24, 2009.

3. By Order filed with the Commission on April 2, 2009, the formal hearing of this matter was set for August 17, 2009.

4. The Honorable David Berchermann, Jr., was appointed Special Master in this matter on April 9, 2009.

5. On June 15, the Examiner and/or counsel for the Commission filed a First Amended Notice of Formal Proceedings (the "Amended Notice") against Respondent, which added numerous factual allegations to those set forth in the February 19 Notice, added several new standards of conduct that Respondent is alleged to have violated, and altered the substance of charges contained in the February 19 Notice.

6. Specifically, the Amended Notice adds paragraph 5,<sup>1</sup> which recites facts concerning Rule 9.2 of the Texas Rules of Appellate Procedure, and paragraph 6, which alleges that Respondent has made an "acknowledge[ment]" about Texas Rule of Appellate Procedure 9.2's effect. The Examiner has added a sentence in paragraph 7 about Respondent's supposed "inconsistent[]" testimony, and has added paragraphs 8 and 10 in their entirety; paragraph 8 concerns the members of the Court of Criminal Appeals who allegedly "intended to stay at the CCA after hours on September 25, 2007," and paragraph 10 recites facts about Respondent's receipt of the *Baze* petition for certiorari.

7. The Amended Notice also adds paragraph 21, which concerns a communication from Respondent to the General Counsel of the CCA, and paragraph 22, which states that Respondent did not refer Mr. Marty to Judge Johnson, and that none of the Judges who remained at the CCA on the evening of September 25, 2007, were aware that Richard's lawyers had called to seek permission to late-file a document. In addition, a sentence has been added to paragraph 25 stating that Respondent knew that there was a judge assigned to receive communications relating to Richard's execution.

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<sup>1</sup> References to paragraphs are to the Amended Notice.

8. The Amended Notice also contains new information or allegations in paragraphs 18, 19, and 20.

9. Even more disturbing is the fact that, four months after filing its initial charging instrument, and only two months before trial, the Amended Notice purports to materially change both the standards Respondent is alleged to have violated and the charges against her. As to the standards, the Amended Notice adds Section 33.001(b) of the Texas Government Code, which purports to define “willful or persistent conduct that is clearly inconsistent with the proper performance of a judge’s duties;” Canon 3C(1) of the Texas Code of Judicial Conduct, which requires diligence in discharging a judge’s administrative responsibilities; and Canon 3C(2) of the Texas Code of Judicial Conduct, which requires a judge to have staff under his or her control to observe the professional standards that apply to the judge. None of these standards was mentioned by the Commission, the Examiner, or the Commission’s Special Counsel prior to the filing of the Amended Notice, even though disclosure of them was required under Texas Rule of Civil Procedure 194.2(c) and in response to Respondent’s Interrogatories, and the Examiner signed the Commission’s discovery responses pursuant to Texas Rules of Civil Procedure 191.3(b) and (c). *See Exhibits A and B hereto.*<sup>2</sup>

10. The Amended Notice also materially changes the charges brought against Respondent. Although never before disclosed as an alleged wrongful act, the Amended Notice now states that Respondent’s alleged “failure to require or assure compliance by the CCA General Counsel and clerk staff with respect to Mr. Richard’s right to be heard”

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<sup>2</sup> Exhibit A is the Commission’s Responses to Respondent’s Requests for Disclosure, served on April 23, 2009; and Exhibit B is the Commission’s Answers to Respondent’s First Set of Interrogatories, served on April 23, 2009. The Commission served a Supplemental Response to Respondent’s Requests for Disclosure, but that supplement did not concern any of the new allegations, standards, and charges contained in the Amended Notice.

constitutes a chargeable act which could result in Respondent's removal from the bench or other sanction. This allegation has been added to Charges I, II, and III of the Amended Notice.<sup>3</sup>

11. The Amended Notice also contains new allegations of violations of Section 33.001(b) of the Texas Government Code, and of Canons 3C(1) and 3C(2) of the Texas Code of Judicial Conduct, to all five of the charges against Respondent, even though the factual allegations of Charges II and III have not been changed at all. These new theories of culpability have been invented out of whole cloth.

12. Only the Commission has authority to bring charges against Respondent. *See* Tex. Gov. Code § 33.022. Neither the Examiner nor Special Counsel for the Commission is authorized by any statute, rule, or regulation to bring charges without the consent or authorization of the Commission.

13. Respondent believes that Special Counsel for the Commission filed the Amended Notice without receiving authorization from the Commission to file the Amended Notice, and hence this proceeding is being prosecuted without authority. If the Commission met to consider the Amended Notice, it did so without providing Respondent with notice of the meeting or an opportunity to be heard at any such proceeding. *See* attached Affidavit of Sharon Keller.

14. The Amended Notice must be stricken, because it does not conform to the rules governing this formal proceeding. The Amended Notice changes the February 19 Notice in ways prohibited under the governing rules, by adding charges and substantively changing the charges already asserted against Respondent. The Rules require the

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<sup>3</sup> In light of the fact that the CCA General Counsel and the Clerk of the CCA work for the entire Court, and not just the Presiding Judge, the entire Court is responsible for any wrongful acts or omissions on the part of the Clerk staff or the General Counsel.

Commission to bring charges only after a verified statement has been submitted and a full investigation has been conducted. The Rules do not allow the Examiner or Special Counsel to conduct a fishing expedition to drum up charges neither alleged by the verified statement nor supported by the full investigation of the Commission – but that is precisely what the Amended Notice does, to Respondent’s severe prejudice.

15. In addition, pursuant to Texas Rule of Civil Procedure 12, the Amended Notice must be stricken, and Special Counsel barred from further participation in this case, in the event that the Amended Notice was filed without the Commission authorizing its filing.

## II. ARGUMENT.

### Motion to Strike

1. The Commission’s authority to review and sanction Respondent’s conduct is narrowly limited by Article 5, Section 1-a of the Texas Constitution; Title 2, Chapter 33, of the Texas Government Code; and the Rules for the Removal or Retirement of Judges. None of these sources of authority provides for the filing of an amended charging instrument which adds charges or changes the substance of the charges made against a judge following a full investigation by the Commission; the only pre-hearing amendments allowed are to set forth additional facts concerning the charges arising from the Commission’s investigation.

2. The Texas Constitution provides for the creation of the Commission, its composition, and the terms of office of the Commissioners. *See* Tex. Const. Art. 5, § 1-a(2) – (4). The Constitution also limits the authority of the Commission to remove from office, discipline, or censure a judge; such sanctions may be imposed *only* for “willful or

persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of the office, willful violation of the Code of Judicial Conduct, or willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice.” *Id.* § 1-a(6).<sup>4</sup>

3. The Texas Constitution also provides that “[t]he Supreme Court shall by rule provide for the procedure before the Commission, Masters, review tribunal and the Supreme Court.” *Id.* §1-a(11). Reflecting the Commission’s narrow scope of authority, the Rules for the Removal or Retirement of Judges (the “Rules”), are far more limited than the Texas Rules of Civil Procedure – there is not, for example, any provision for special exceptions or summary judgments, and the Texas Government Code expressly prohibits a jury trial in formal proceedings before a Special Master or the Commission. *See* Tex. Gov’t Code § 33.022(k).

4. The Rules are clear. A formal proceeding can be commenced, and charges brought, only after a full investigation into the facts alleged in a verified statement. *See* Rules 3, 4. Rule 10 governs formal proceedings before the Commission, and they are initiated as follows:

(1) If after the investigation has been completed the Commission concludes that formal proceedings should be instituted, the matter shall be entered in a docket to be kept for that purpose and written notice of the

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<sup>4</sup> By contrast, the Texas Legislature can impeach a judge and remove her from office for any reason, as the Texas Constitution specifies no grounds for impeachment. *See* 1993 comments to Tex. Const. Art. 15, § 1 (“In most state constitutions, impeachment has been reserved almost exclusively for high officers of the state for offenses in or relative to their office. But Texas is one of nine states in which the constitution specifies no grounds for impeachment, and therefore misconduct of an officer in a private capacity, but of such a character as to indicate unfitness for office, can be grounds for impeachment in Texas.”). In addition, certain judges may be removed from office by the governor on the vote of two-thirds of each house of the Legislature for “wilful neglect of duty, incompetency, habitual drunkenness, oppression in office, breach of trust, or any other reasonable cause that is not a sufficient ground for impeachment.” Tex. Gov’t Code § 665.052.



institution of formal proceedings shall be issued to the judge without delay. . . .

(2) The notice shall specify in ordinary and concise language the charges against the judge, and the alleged facts upon which such charges are based and the specific standards contended to have been violated . . . .

Rule 10(a)(1)-(2).

5. Rule 10(b) controls the Respondent's answer; Rule 10(c) concerns the procedure by which the matter is set for hearing before the Commission or a Special Master; and Rule 10(d) governs the hearing. Significantly, for the purposes of this Motion, the hearing – and *only* the hearing – “shall proceed . . . as nearly as may be according to the rules of procedure governing the trial of civil causes in this State[.]”

Rule 10(d)(1).<sup>5</sup>

6. In sum, except during the hearing, when the Texas Rules of Civil Procedure are in effect, a formal proceeding is governed exclusively by the Rules. The Rules plainly do not permit the addition or alteration of substantive charges without a verified statement and a full investigation by the Commission, as the Examiner has attempted by filing the Amended Notice. Specifically, the applicable Rule 10(f) provides, in its entirety, as follows:

The Special Master, at any time prior to the conclusion of the hearing, or the Commission, at any time prior to its determination, may allow or require amendments to the notice of formal proceedings and may allow amendments to the answer. *The notice may be amended to conform to proof or to set forth additional facts, whether occurring before or after the commencement of the hearing.* In case such an amendment is made, the judge shall be given reasonable time both to answer the amendment and to prepare and present [her] defense against the matters charged thereby.

Rule 10(f).

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<sup>5</sup> Likewise, evidence at the hearing “shall be received as in the trial of civil cases.” Rule 10(e).

7. The Amended Notice should be stricken for two reasons. First, Rule 10(f) does not permit the filing of an amended charging instrument as of right; it expressly states that the Commission or Special Master *may allow* an amended document to be filed, but the Examiner has not requested leave to file the Amended Notice, nor has she given any reason for its filing.<sup>6</sup> Accordingly, the Amended Notice should be stricken.

8. Second, and more importantly, the only kind of amended charging instrument permitted prior to the hearing is one which only sets forth additional facts supporting the charges already filed in the February 19 Notice – that is, the charges brought following the submission of a verified statement and a full investigation by the Commission. The Rules do not allow the Commission to bring charges, then have the Examiner conduct a fishing expedition to invent charges neither alleged by the verified statement nor supported by the full investigation of the Commission. Since the Examiner's Amended Notice adds charges and substantively changes the charges brought in the February 19 Notice, it is an improper and unauthorized instrument which prejudices Respondent and which therefore must be stricken.

#### *Motion to Show Authority*

9. Section 33.022 of the Texas Government Code authorizes the Commission, and only the Commission, to bring charges against Respondent. Rule 1(j) of the Procedural Rules for the Removal or Retirement of Judges limits the role of the Examiner and Special Counsel to merely gathering and presenting evidence.

10. As set forth in the attached Affidavit of Sharon Keller, Respondent believes that Special Counsel for the Commission filed the Amended Notice without

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<sup>6</sup> Inasmuch as the rule governing amendments to the notice comes after the rules about the hearing and evidence received at the hearing, it may be that the Supreme Court intended to prohibit prehearing amendments entirely. In any event, the Rules prohibit prehearing amendments as of right.

receiving authorization from the Commission to file the Amended Notice, and hence this proceeding is being prosecuted without authority. If the Commission met to consider the Amended Notice, it did so without providing Respondent with notice of the meeting or an opportunity to be heard at any such proceeding.

11. Accordingly, Respondent brings this Motion for Attorney to Show Authority pursuant to Rule 12, Texas Rules of Civil Procedure. Special Counsel for the Commission shall be cited to appear to show his authority to file the Amended Complaint. Upon Special Counsel's failure to show authority, Respondent requests that the Special Master refuse to permit the Special Counsel to appear in this cause, and to strike the Amended Notice.

### **III. PRAYER.**

WHEREFORE, Respondent respectfully requests that the Special Master issue an order striking Amended Notice filed June 15, 2009, and reinstating the original charging document, the February 19 Notice. Respondent further requests that, should Special Counsel fail to prove that the Commission voted to authorize him to file the Amended Notice, the Special Master refuse to permit the Special Counsel to appear in this cause, and to strike the Amended Notice, as required by Rule 12, Texas Rules of Civil Procedure.

Respectfully submitted,  
JACKSON WALKER L.L.P.

By: 

Charles L. Babcock  
State Bar No. 01479500  
Email: cbabcock@jw.com  
Mary Lou Flynn-DuPart  
Texas Bar No. 07199700  
1401 McKinney, Suite 1900  
Houston, Texas 77010  
(713) 752-4200  
(713) 752-4221 – Fax  
Kurt Schwarz  
State Bar No. 17871550  
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State Bar No. 24047169  
901 Main St., Ste. 6000  
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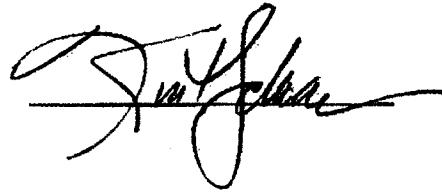
**ATTORNEYS FOR RESPONDENT  
THE HONORABLE SHARON  
KELLER**

**CERTIFICATE OF SERVICE**

This is to certify that on this 27<sup>th</sup> day of June, 2009, a true and correct copy of the foregoing document was served via electronic transmission upon:

Ms. Seana Willing  
State Commission on Judicial Conduct  
P.O. Box 12265  
Austin, Texas 78711  
Facsimile #512-463-0511

Mr. John J. McKetta, III  
Graves Dougherty Hearon & Moody  
401 Congress Ave., Suite 2200  
Austin, Texas 78701

A handwritten signature in black ink, appearing to read "John J. McKetta, III", written over a horizontal line.

**CERTIFICATE OF CONFERENCE**

This is to certify that on June 23, 2009, counsel for Respondent conferred with Special Counsel for the Commission about the foregoing Motions, and Counsel for the Commission stated that he was opposed to the relief sought. Therefore, this matter is submitted to the Special master for determination.

A handwritten signature in black ink, appearing to read "David J. Cohen", is written over a horizontal line. The signature is stylized and cursive.

COUNTY OF TRAVIS

§

STATE OF TEXAS

§

§

**AFFIDAVIT OF SHARON KELLER**

BEFORE ME, the undersigned authority, on this day personally appeared Sharon Keller, known to me, who upon her oath deposed and stated as follows:

1. My name is Sharon Keller. I am over 21 years old, have never been convicted of a felony or misdemeanor involving moral turpitude, and am fully competent to make this Affidavit. Unless otherwise noted, I have personal knowledge of all facts set forth in this Affidavit, and all facts within my personal knowledge are true and correct.

2. I am the Presiding Judge of the Texas Court of Criminal Appeals and am the Respondent in Inquiry Concerning Judge, No. 96, *In Re: The Honorable Sharon Keller, Presiding Judge of the Texas Court of Criminal Appeals, Austin, Travis County, Texas*, before the State Commission on Judicial Conduct (the "SCJC Proceeding"). I have reviewed First Amended Notice of Formal Proceedings (the "Amended Notice") in the Proceeding and am familiar with its contents.

3. I believe that the Special Counsel for the Commission filed the Amended Notice without receiving authorization from the Commission to file the Amended Notice, and therefore I believe that the SCJC Proceeding is being prosecuted by the Special Counsel without authority. If the Commission met to consider the Amended Notice, it

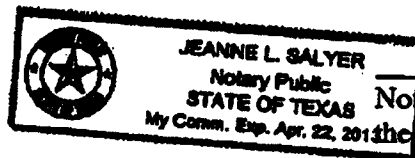
did so without providing Respondent with notice of the proceeding or an opportunity to be heard at any such proceeding.

FURTHER AFFIANT SAYETH NAUGHT.

Sharon Keller  
Honorable Sharon Keller

STATE OF TEXAS            )  
  )  
COUNTY OF TRAVIS        )

SUBSCRIBED AND SWORN TO BEFORE ME on this 24<sup>th</sup> day of June, 2009.

 Jeanne L. Salyer  
Notary Public in and for  
the State of Texas

My Commission Expires:  
April 22, 2013



**BEFORE THE  
STATE COMMISSION ON JUDICIAL CONDUCT**

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**INQUIRY CONCERNING A JUDGE,**

**No. 96**

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**RESPONSE TO RESPONDENT'S REQUESTS FOR DISCLOSURE**

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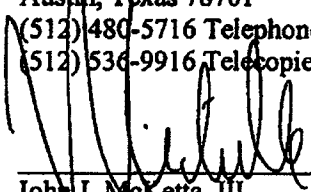
TO: The Honorable Judge Sharon Keller, by and through her counsel of record Charles ("Chip") L. Babcock, JACKSON WALKER, LLP, 1401 McKinney Street, Suite 1900, Houston, Texas 77010.

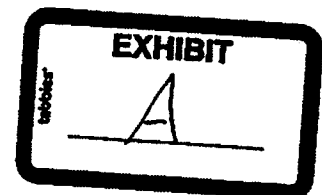
COMES NOW, the State Commission on Judicial Conduct ("State Commission") and submits these its Objections and Responses to Respondent's Requests for Disclosure.

Respectfully submitted,

GRAVES DOUGHERTY HEARON & MOODY, P.C.  
401 Congress Avenue, Suite 2200  
Austin, Texas 78701  
(512) 480-5716 Telephone  
(512) 536-9916 Telecopier

By:

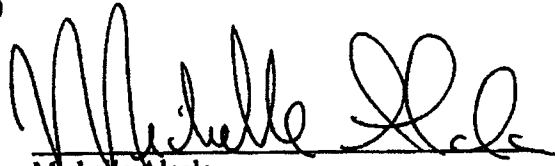
  
\_\_\_\_\_  
John J. Mcketta, III  
State Bar Number 13711500  
Michelle Alcala  
State Bar Number 24040403



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served on the following counsel via U.S. Certified Mail, Return Receipt Requested, on this 23<sup>rd</sup> day of April, 2009:

Mr. Charles ("Chip") L. Babcock  
JACKSON WALKER, LLP  
1401 McKinney Street, Suite 1900  
Houston, Texas 77010

  
Michelle Alcala

## RESPONSES TO REQUEST FOR DISCLOSURE

- (a) The correct names of the parties to the lawsuit.

**RESPONSE:** The State Commission believes that all parties have been named correctly.

- (b) The name, address, and telephone number of any potential parties.

**RESPONSE:** The State Commission is not aware of any potential parties at this time.

- (c) The legal theories and, in general, the factual bases of the responding party's claims or defenses (the responding party need not marshal all evidence that may be offered at trial).

**RESPONSE:**

The State Commission contends that on September 25, 2007, Judge Keller willfully violated the Texas Court of Criminal Appeals' (the "CCA") Execution – Day Procedures when she failed to refer communications regarding the Richard execution, which was scheduled for 6 p.m. the same day, to the designated judge in charge of the execution, as she was required to do according to the CCA's Execution – Day Procedures.

More specifically, in response to the CCA's General Counsel, Edward Marty's, question to her shortly before 5 p.m. on September 25, 2007 as to whether the CCA's clerk's office could stay open past 5 p.m., Judge Keller unilaterally and abruptly answered "no" despite knowing that: (i) Mr. Marty's telephone call was about the Richard execution; (ii) Mr. Richard was going to be executed at 6 p.m. that same day; (iii) certiorari had been granted in *Baze* that morning; (iv) a filing by Mr. Richard's lawyers based on the issue in *Baze* had been anticipated; (v) Mr. Richard's lawyers wanted to file something with the CCA, but were not ready to file with the CCA by 5 p.m., and (vi) Mr. Richard's lawyers had called and requested that they be permitted to file after 5 p.m. Even after Mr. Marty explained that he was asking the question because "they wanted to file something, but they were not ready," Judge Keller again abruptly answered "no."

Although Judge Keller knew that Mr. Marty's telephone call to her shortly before 5 p.m. on September 25, 2007 related to the Richard scheduled execution, Judge Keller failed to direct Mr. Marty to relay the communication to the designated judge. Likewise, although Judge Keller knew at the time of her conversation with Mr. Marty that the CCA had expected that Mr. Richard's lawyers would file something with the CCA attempting to stay Mr. Richard's execution based on the *Baze* decision and that Mr. Richard's lawyers had requested that they be permitted to file something with the Court after 5 p.m., Judge Keller failed to inform Mr. Marty that although the CCA's clerk's office closed at 5 p.m., the designated judge was available to accept motions to stay the execution up until the execution and/or that the CCA judges would review the fax filings related to the execution.

The State Commission contends that by abruptly responding to Mr. Marty question, — knowing that it related to the Richard execution and knowing that Mr. Richard's lawyers wanted to file something with the CCA, but were not ready to file before 5 p.m. — with no further explanation or instruction, Judge Keller willfully gave Mr. Marty the false impression that

because she had made the decision to close the CCA's clerk's office at 5 p.m., the CCA judges would not review papers filed by Mr. Richard's lawyers after 5 p.m.

Judge Keller's actions resulted in Mr. Marty giving the CCA's clerk's office the false impression that because Judge Keller had made the decision to close the CCA's clerk's office at 5 p.m., the CCA would not accept filing for Mr. Richard after 5 p.m. Consequently, the CCA's clerk's office told Mr. Richard's lawyers that because the decision had been made to close the CCA's clerk's office at 5 p.m., the CCA would not accept filings for Mr. Richard after 5 p.m., which effectively closed any further access by Mr. Richard's lawyers with the CCA concerning the effort to obtain a stay of Mr. Richard's execution based on the legal issue for which the CCA had granted certiorari that very day. These actions along with the other specifically identified in the Notice of Formal Hearing, violated the standards of Article 5, Section 1-a(6)A of the Texas Constitution, Article 1, Section 13 of the Texas Constitution, and Cannons 2A and 3B(8) of the Texas Code of Judicial Conduct.

(d) The amount and any method of calculating economic damages.

**RESPONSE:** The State Commission is not seeking any economic damages at this time.

(e) The name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case.

**RESPONSE:**

Mr. Charles ("Chip") L. Babcock  
JACKSON WALKER, LLP  
1401 McKinney Street, Suite 1900  
Houston, Texas 77010  
(713) 752-4210 Telephone  
(713) 752-4221 Fax

**Attorney for Respondent The Honorable Judge Sharon Keller.**

The Honorable Judge Sharon Keller  
c/o JACKSON WALKER, LLP  
1401 McKinney Street, Suite 1900  
Houston, Texas 77010  
(713) 752-4210 Telephone  
(713) 752-4221 Fax

**Judge Sharon Keller is the respondent in this matter.**

Mr. John J. McKetta, III ("Mike")  
Ms. Michelle Alcala  
Graves, Dougherty, Hearon & Moody

401 Congress Ave., Suite 2200  
Austin, Texas 78701  
(512) 480-5600 Telephone  
(512) 478-1976 Fax

**Mr. McKetta and Ms. Alcalá are Special Counsel for the State Commission on Judicial Conduct.**

Ms. Seana Willing  
State Commission on Judicial Conduct  
P.O. Box 12265  
Austin, Texas 78711  
(512) 463-5533 Telephone  
(512) 463-0511 Fax

**Ms. Willing is the State Commission's Executive Director.**

Mr. Ron Bennett  
State Commission on Judicial Conduct  
P.O. Box 12265  
Austin, Texas 78711  
(512) 463-5533 Telephone  
(512) 463-0511 Fax

**Mr. Bennett is the State Commission's Chief Investigator.**

Honorable Sid Harle  
Mr. Jorge C. Rangel  
Ms. Ann Appling Bradford  
Hon. Michael R. Fields  
Honorable Monica Gonzalez  
Honorable Ernie Houdashell  
Mr. Tom Cunningham  
Mr. William "Bill" Lawrence  
Ms. Janelle Sheppard  
Honorable Jan P. Paterson  
Ms. Karry K. Matson  
c/o State Commission on Judicial Conduct  
P.O. Box 12265  
Austin, Texas 78711  
(512) 463-5533 Telephone  
(512) 463-0511 Fax

**State Commission on Judicial Conduct Members**

Mr. Neal S. Manne

SUSMAN GODFREY, LLP  
Houston, Texas 77002  
(713) 653-7827 Telephone  
(713) 654-3380 Fax

**Attorney for Texas Defender Services.**

Professor David Dow  
c/o SUSMAN GODFREY, LLP  
Houston, Texas 77002  
(713) 653-7827 Telephone  
(713) 654-3380 Fax

**Professor Dow is the Texas Defender Services' Senior Director.**

Dorlinda Fox  
c/o SUSMAN GODFREY, LLP  
Houston, Texas 77002  
(713) 653-7827 Telephone  
(713) 654-3380 Fax

**Ms. Fox is a paralegal with the Texas Defender Services' Austin office**

Mr. Greg Wiercioch  
c/o SUSMAN GODFREY, LLP  
Houston, Texas 77002  
(713) 653-7827 Telephone  
(713) 654-3380 Fax

**Mr. Wiercioch is the Texas Defender Services' senior staff attorney.**

Ms. Alma Lagarda  
c/o SUSMAN GODFREY, LLP  
Houston, Texas 77002  
(713) 653-7827 Telephone  
(713) 654-3380 Fax

**Ms. Lagarda is a staff attorney with the Texas Defender Services' Houston office.**

Ms. Melissa Waters  
c/o SUSMAN GODFREY, LLP  
Houston, Texas 77002  
(713) 653-7827 Telephone  
(713) 654-3380 Fax

**Ms. Waters is a Texas Defender Services paralegal.**

Ms. Sepulveda  
c/o SUSMAN GODFREY, LLP  
Houston, Texas 77002  
(713) 653-7827 Telephone  
(713) 654-3380 Fax

**Ms. Sepulveda is an administrator at Texas Defender Services.**

Judge Paul Womack  
Judge Tom Price  
Judge Cheryl Johnson  
Judge Lawrence E. Meyers  
Judge Michael E. Keasler  
Judge Barbra Parker Hervey  
Judge Charles Holcomb  
Judge Cathy Cochran  
c/o Texas Court of Criminal Appeals  
201 E 14th St  
Austin, TX 78701  
(512) 463-1597 Telephone  
(512) 463-7071 (Facsimile)

**Judges on the Texas Court of Criminal Appeals.**

Mr. Edward Marty  
545 CR 239  
Gatesville, TX 76528

**Mr. Marty is a former General Counsel for the Texas Court of Criminal Appeals.**

Sian Schilab  
c/o Court of Criminal Appeals  
201 E 14th St  
Austin, Texas 78701  
(512) 463-1597 (Telephone)  
(512) 463-7071 (Facsimile)

**Ms. Schilab is the current General Counsel for the Texas Court of Criminal Appeals who superseded Edward Marty.**

Mr. Gary Hart  
c/o Texas Court of Criminal Appeals

201 E 14th St  
Austin, TX 78701  
(512) 463-1597 Telephone  
(512) 463-7071 (Facsimile)

**Mr. Hart is a Texas Court of Criminal Appeals staff attorney.**

Mr. Abel Acosta  
c/o Texas Court of Criminal Appeals  
201 E 14th St  
Austin, TX 78701  
(512) 463-1597 Telephone  
(512) 463-7071 (Facsimile)

**Mr. Acosta is a Texas Court of Criminal Appeals Deputy Clerk.**

Louise Pearson  
c/o Texas Court of Criminal Appeals  
201 E 14th St  
Austin, TX 78701  
(512) 463-1597 Telephone  
(512) 463-7071 (Facsimile)

**Ms. Pearson is the Clerk for the Texas Court of Criminal Appeals.**

Mr. Baxter Morgan  
2301 S. Capital of Texas Highway  
Building H  
Austin, TX, 78746  
(512) 474-9486 (Telephone)

**Mr. Morgan is a former Assistant Attorney General who was involved in the Richard execution.**

Mr. Danny Bickell  
One First Street, NE,  
Washington, DC 20543  
202-479-3011 (Telephone)

**Mr. Bickell is a United States Supreme Court death penalty clerk who had some involvement in the Richard execution.**

Mr. Michael Bryant  
P.O. Box 12428  
Austin, TX, 78711



**Mr. Bryant is an Assistant General Counsel in Texas Governor Rick Perry's office who had some involvement in the Richard execution.**

Ms. Lynn Hardaway  
1201 Franklin 6th Floor  
Houston, TX, 77024

**Ms. Hardaway is a Harris County Assistant District Attorney who had some involvement in the Richard execution.**

Mr. Richard E. Wetzel  
1411 West Avenue Suite 100  
Austin, Texas 78701  
(512) 469-7943

**Mr. Weitzel is the former General Counsel for the Texas Court of Criminal Appeals who preceded Edward Marty**

- (f) For any testifying expert:
  - (1) The expert's name, address and telephone number;
  - (2) The subject matter on which the expert will testify;
  - (3) The general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;
  - (4) If the expert is retained by, employed by, or otherwise subject to the control of the responding party:
    - (A) All documents, tangible things, reports, models or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and
    - (B) The expert's current resume and bibliography.

**RESPONSE:** None at this time. The State Commission will supplement in accordance with Rule 195.2 of the Texas Rules of Civil Procedure.

- (g) Any indemnity and insuring agreements described in rule 192.3(f).

**RESPONSE:** N/A

- (h) Any settlement agreements described in rule 192.3(g).

**RESPONSE:** N/A

(i) Any witness statements described in Rule 192.3(h).

**RESPONSE:** The State Commission is producing responsive documents with its disclosure responses to the extent it has responsive documents.

**BEFORE THE  
STATE COMMISSION ON JUDICIAL CONDUCT**

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**INQUIRY CONCERNING A JUDGE,**

**No. 96**

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**ANSWERS TO RESPONDENT'S FIRST SET OF INTERROGATORIES**

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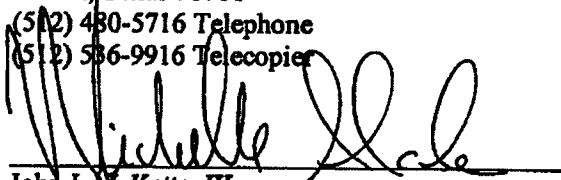
**TO: The Honorable Judge Sharon Keller, by and through her counsel of record Charles ("Chip") L. Babcock, JACKSON WALKER, LLP, 1401 McKinney Street, Suite 1900, Houston, Texas 77010.**

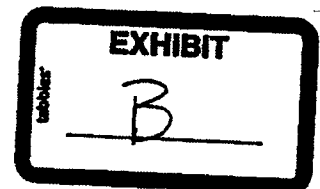
**COMES NOW, the State Commission on Judicial Conduct ("State Commission") and submits these its Answers to Respondent's First Set of Interrogatories.**

Respectfully submitted,

GRAVES DOUGHERTY HEARON & MOODY, P.C.  
401 Congress Avenue, Suite 2200  
Austin, Texas 78701  
(512) 480-5716 Telephone  
(512) 586-9916 Telecopier

By:

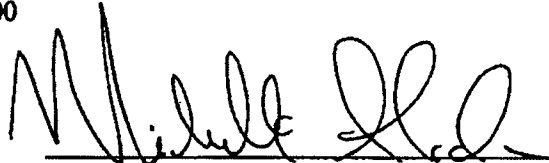
  
\_\_\_\_\_  
John J. McKetta, III  
State Bar Number 13711500  
Michelle Alcala  
State Bar Number 24040403



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served on the following counsel via U.S. Certified Mail, Return Receipt Requested, on this 23<sup>rd</sup> day of April, 2009:

Mr. Charles ("Chip") L. Babcock  
JACKSON WALKER, LLP  
1401 McKinney Street, Suite 1900  
Houston, Texas 77010

  
Michelle Alcala

**INTERROGATORY NO. 1:**

Explain in detail the state interest in prohibiting a presiding judge from setting administrative hours of operation for the Clerk's Office of the Court.

**ANSWER:**

The State Commission objects to this request on the ground that there is no predicate for the interrogatory and it is overly broad, vague, and not limited in time or scope to the matters at issue in this lawsuit.

**INTERROGATORY NO. 2:**

Describe any law(s) Respondent allegedly violated on September 25, 2007. Please provide the citation to that law and describe how Respondent violated it.

**ANSWER:**

The State Commission incorporates the Notice of Formal Hearing herein as if fully set forth at length. The Notice of Formal Hearing, specifically identifies the factual basis and the specific statutes and laws Respondent is alleged to have violated in this case. Notwithstanding this statement, on September 25, 2007, Judge Keller violated the CCA's Execution-day procedures when she spoke with Mr. Marty shortly before 5 p.m. and unilaterally made a decision to close the CCA's clerk's office at 5 p.m. without referring the matter to the designated judge assigned to the execution, despite knowing at the time of her making the decision that the question of whether the CCA's clerk's office could remain upon past 5 p.m. related to the Richard execution. Judge Keller was not the designated judge assigned to the Richard execution, and according to the CCA's Execution-day procedures, all communications about the Richard execution should have been first referred to the assigned judge.

The following laws are alleged to have been violated in the Notice of Formal Hearing: Article 5, Section 1-a(6)A of the Texas Constitution, Article 1, Section 13 of the Texas Constitution, and Cannons 2A and 3B(8) of the Texas Code of Judicial Conduct. Judge Keller violated these laws on September 25, 2007 when after speaking with Mr. Marty shortly before 5 p.m. on September 25, 2007, she: (a) refused to keep the CCA's clerk's office or the Court open past 5 p.m.; (b) failed to clarify the reasons why Mr. Marty was asking her whether the CCA's clerk's office or the Court could stay open past 5 p.m. (c) failed to raise any concern about Mr. Richard's lawyers ability to get their paperwork to the CCA judges prior to Mr. Richard's execution, and (d) failed to accommodate Mr. Richard's lawyers' situation despite knowing that: (i) Mr. Richard was scheduled to be executed at 6 p.m. that same day; (ii) certiorari had been granted in *Baze* that morning; (iii) a filing by Mr. Richard's lawyers based on the issue in *Baze* had been anticipated; (iv) Mr. Richard's lawyers wanted to file something with the CCA, but were not ready to file with the CCA by 5 p.m.; (v) Mr. Richard's lawyers had called and requested that they be permitted to file after 5 p.m., and (vi) Mr. Marty's telephone call to her shortly before 5 p.m. on September 25, 2007 was about Mr. Richard's execution.

**INTERROGATORY NO. 3:**

Explain in detail Respondent's alleged failure(s) to follow CCA's Execution-day Procedures on September 25, 2007.

**ANSWER:**

The State Commission objects to this interrogatory on the ground that it exceeds the scope of permissible discovery under Rule 197 of the Texas Rules of Civil Procedure to the extent it fails to seek a specific legal or factual bases, in general terms, of the State Commission's claims or defenses. An interrogatory may not be used to require the responding party to marshal all of its available proof it intends to use at trial.

Subject to and without waiving this objection, the State Commission's basic legal and factual contentions at this early stage of discovery is that Judge Keller failed to follow the CCA's Execution-day Procedures on September 25, 2007 when she spoke with Mr. Marty shortly before 5 p.m. and unilaterally made a decision to close the CCA's clerk's office at 5 p.m. without referring the matter to the designated judge assigned to the execution, despite knowing at the time of her making the decision that the question of whether the CCA's clerk's office could remain upon past 5 p.m. related to the Richard execution. Judge Keller was not the designated judge assigned to the Richard execution, and according to the CCA's Execution-day procedures, all communications about the Richard execution should have been first referred to the assigned judge.

**INTERROGATORY NO. 4:**

Explain every action(s) taken by Respondent that allegedly did not promote public confidence in the integrity and impartiality of the judiciary on September 25, 2007.

**ANSWER:**

The State Commission objects to this interrogatory on the ground that it exceeds the scope of permissible discovery under Rule 197 of the Texas Rules of Civil Procedure to the extent it fails to seek a specific legal or factual bases, in general terms, of the State Commission's claims or defenses. An interrogatory may not be used to require the responding party to marshal all of its available proof it intends to use at trial.

Subject to and without waiving this objection, the State Commission's basic legal and factual contentions at this early state of discovery are that Judge Keller did not promote public confidence in the integrity and impartiality of the judiciary on September 25, 2007 by failing to follow the CCA's Execution-day procedures as described in response to Interrogatory No. 3.

In addition, Judge Keller did not promote public confidence in the integrity and impartiality of the judiciary on September 25, 2007 when after speaking with Mr. Marty shortly before 5 p.m.

on September 25, 2007, she: (a) refused to keep the CCA's clerk's office or the Court open past 5 p.m.; (b) failed to clarify the reasons why Mr. Marty was asking her whether the CCA's clerk's office or the Court could stay open past 5 p.m. (c) failed to raise any concern about Mr. Richard's lawyers ability to get their paperwork to the CCA judges prior to Mr. Richard's execution, and (d) failed to accommodate Mr. Richard's lawyers' situation despite knowing that: (i) Mr. Richard was scheduled to be executed at 6 p.m. that same day; (ii) certiorari had been granted in *Baze* that morning; (iii) a filing by Mr. Richard's lawyers based on the issue in *Baze* had been anticipated; (iv) Mr. Richard's lawyers wanted to file something with the CCA, but were not ready to file with the CCA by 5 p.m.; (v) Mr. Richard's lawyers had called and requested that they be permitted to file after 5 p.m., and (vi) Mr. Marty's telephone call to her shortly before 5 p.m. on September 25, 2007 was about Mr. Richard's execution.

#### **INTERROGATORY NO. 5:**

Explain in detail how Respondent allegedly did not accord Mr. Richard access to open courts or the right to be heard according to law.

#### **ANSWER:**

The State Commission objects to this interrogatory on the ground that it exceeds the scope of permissible discovery under Rule 197 of the Texas Rules of Civil Procedure to the extent it fails to seek a specific legal or factual bases, in general terms, of the State Commission's claims or defenses. An interrogatory may not be used to require the responding party to marshal all of its available proof it intends to use at trial.

Subject to and without waiving this objection, the State Commission's basic legal and factual contentions are that on September 25, 2007, Judge Keller willfully refused to keep the CCA's clerk's office or the Court open past 5 p.m. despite the fact that she knew the following: (i) Mr. Richard was scheduled to be executed at 6 p.m. that same day; (ii) certiorari had been granted in *Baze* that morning; (iii) a filing by Mr. Richard's lawyers based on the issue in *Baze* had been anticipated; (iv) Mr. Richard's lawyers wanted to file something with the CCA, but were not ready to file with the CCA by 5 p.m., (v) Mr. Richard's lawyers had called and requested that they be permitted to file after 5 p.m., and (vi) Mr. Marty's telephone call to her shortly before 5 p.m. on September 25, 2007 was about Mr. Richard's execution.

In addition, when Mr. Marty called Judge Keller shortly before 5 p.m. on September 25, 2007, and asked whether the CCA's clerk's office or the Court could stay open past 5 p.m., Judge Keller abruptly said "no". In addition, when Mr. Marty told Judge Keller that he was asking because "they wanted to file something but were not ready" Judge Keller again said "no" without further explanation or instruction willfully giving Mr. Marty the false impression that because the decision had been made to close the CCA's clerk's office at 5 p.m., the CCA judges would not accept pleadings from Mr. Richard's lawyers after 5 p.m. that day.

Based on Judge Keller's abrupt reply, Mr. Marty (who was under the incorrect impression that because the decision had been made to close the CCA's clerk's office at 5 p.m., the CCA judges

would not accept pleadings from Mr. Richard's lawyers after 5 p.m. that day) directed that Mr. Abel Acosta in the CCA's clerk's office not accept a filing after 5:00 p.m. and gave Mr. Acosta the false impression that because the decision had been made to close the CCA's clerk's office at 5 p.m., the CCA judges would not accept pleadings from Mr. Richard's lawyers after 5 p.m. that day.

Consequently, Mr. Acosta told Mr. Richard's lawyers that the decision had been made that no filing would be accepted after 5 p.m., and when Mr. Richard's lawyers called to say that they were coming to hand deliver paperwork to the CCA after 5 p.m., Mr. Acosta told Mr. Richard's lawyers not to bother because no one was there to accept the filing, thereby, giving Mr. Richard's lawyers the false impression that the CCA judges would not accept pleadings from Mr. Richard's lawyers after 5 p.m. that day and effectively blocking Mr. Richard's open access to the CCA concerning the effort to obtain a stay of Mr. Richard's execution based on the legal issue for which the USSC had granted certiorari that very day.

#### **INTERROGATORY NO. 6:**

Describe each action by Respondent on September 25, 2007 that cast public discredit on the judiciary or the administration of justice.

#### **ANSWER:**

The State Commission objects to this interrogatory on the ground that it exceeds the scope of permissible discovery under Rule 197 of the Texas Rules of Civil Procedure to the extent it fails to seek a specific legal or factual bases, in general terms, of the State Commission's claims or defenses. An interrogatory may not be used to require the responding party to marshal all of its available proof it intends to use at trial.

Subject to and without waiving this objection, the State Commission's basic legal and factual contentions are that Judge Keller's actions on September 25, 2007 cast public discredit on the judiciary and/or the administration of justice when she failed to follow the CCA's Execution-day procedures as described in response to Interrogatory No. 3.

In addition, the State Commission contends that Judge Keller's actions on September 25, 2007 cast public discredit on the judiciary and/or the administration of justice when, after speaking with Mr. Marty shortly before 5 p.m., she (a) made the decision not to keep the CCA's clerk's office or the Court open past 5 p.m.; (b) failed to clarify the reasons why Mr. Marty was asking her whether the CCA's clerk's office or the Court could stay open past 5 p.m. (c) failed to raise any concern about Mr. Richard's lawyers ability to get their paperwork to the CCA judges, and (d) failed to accommodate Mr. Richard's lawyers' situation despite knowing that: (i) Mr. Richard was scheduled to be executed at 6 p.m. that same day; (ii) certiorari had been granted in *Baze* that morning; (iii) a filing by Mr. Richard's lawyers based on the issue in *Baze* had been anticipated; (iv) Mr. Richard's lawyers wanted to file something with the CCA, but were not ready to file with the CCA by 5 p.m., (v) Mr. Richard's lawyers had called and requested that they be permitted to file after 5 p.m., and (vi) Mr. Marty's telephone call to her shortly before 5 p.m. on September 25, 2007 was about Mr. Richard's execution.



**INTERROGATORY NO. 7:**

Explain in detail how Respondent on September 25, 2007 failed to perform her duties as Presiding Judge.

**ANSWER:**

The State Commission objects to this interrogatory on the ground that it exceeds the scope of permissible discovery under Rule 197 of the Texas Rules of Civil Procedure to the extent it fails to seek a specific legal or factual bases, in general terms, of the State Commission's claims or defenses. An interrogatory may not be used to require the responding party to marshal all of its available proof it intends to use at trial.

Subject to and without waiving this objection, the State Commission's basic legal and factual contentions at this early stage of discovery are that on September 25, 2007, Judge Keller failed to perform her duties as Presiding Judge by failing to follow the CCA's Execution- day procedures as described in response to Interrogatory No. 3.

The State Commission also contends that on September 25, 2007, Judge Keller's failed to perform her duties as Presiding Judge when, after speaking to Mr. Marty shortly before 5 p.m., she (a) failed to clarify the reasons why Mr. Marty was asking her whether the CCA's clerk's office or the Court could stay open past 5 p.m. (b) failed to inform Mr. Marty that although the CCA's clerk's office or the Court would close at 5 p.m., the designated judge was available to accept motions to stay the execution up until the execution (c) failed to inform Mr. Marty that although the CCA's clerk's office or the Court would close at 5 p.m., the CCA judges would review the fax filings related to the execution, and (d) failed to accommodate Mr. Richard's lawyers' situation despite knowing that (i) Mr. Richard was scheduled to be executed at 6 p.m. that same day; (ii) certiorari had been granted in *Baze* that morning; (iii) a filing by Mr. Richard's lawyers based on the issue in *Baze* had been anticipated; (iv) Mr. Richard's lawyers wanted to file something with the CCA, but were not ready to file with the CCA by 5 p.m., (v) Mr. Richard's lawyers had called and requested that they be permitted to file after 5 p.m., and (vi) Mr. Marty's telephone call to her shortly before 5 p.m. on September 25, 2007 was about Mr. Richard's execution.

**INTERROGATORY NO. 8:**

Describe each action by Respondent on September 25, 2007 that was clearly inconsistent with the proper performance of her duties as Presiding Judge.

**ANSWER:**

The State Commission objects to this interrogatory on the ground that it exceeds the scope of permissible discovery under Rule 197 of the Texas Rules of Civil Procedure to the extent it fails to seek a specific legal or factual bases, in general terms, of the State Commission's claims or defenses. An interrogatory may not be used to require the responding party to marshal all of its available proof it intends to use at trial.

Subject to and without waiving this objection, please see the answer to Interrogatory No. 7, which is incorporated herein.

**INTERROGATORY NO. 9:**

Explain in detail how Respondent on September 25, 2007 was incompetent in the performance of her duties.

**ANSWER:**

The State Commission objects to this interrogatory on the ground that it exceeds the scope of permissible discovery under Rule 197 of the Texas Rules of Civil Procedure to the extent it fails to seek a specific legal or factual bases, in general terms, of the State Commission's claims or defenses. An interrogatory may not be used to require the responding party to marshal all of its available proof it intends to use at trial.

Subject to and without waiving this objection, the State Commission's basic legal and factual contentions at this early stage of discovery are that on September 25, 2007, Judge Keller was incompetent in the performance of her duties when she failed to follow the CCA's Execution-day procedures as described in response to Interrogatory No. 3.

The State Commission also contends that on September 25, 2007, Judge Keller was incompetent in the performance of her duties, when after speaking with Mr. Marty shortly before 5 p.m. on September 25, 2007, she (a) failed to clarify the reasons why Mr. Marty was asking her whether the CCA's clerk's office or the Court could stay open past 5 p.m.; (b) failed to inform Mr. Marty that although the CCA's clerk's office or the Court would close at 5 p.m., the designated judge was available to accept motions to stay the execution up until the execution; (c) failed to inform Mr. Marty that although the CCA's clerk's office or the Court would close at 5 p.m., the CCA judges would review the fax filings related to the execution, and (iv) failed to accommodate Mr. Richard's lawyers' situation despite knowing that: (i) Mr. Richard was scheduled to be executed at 6 p.m. that same day; (ii) certiorari had been granted in *Baze* that morning; (iii) a filing by Mr. Richard's lawyers based on the issue in *Baze* had been anticipated; (iv) Mr. Richard's lawyers wanted to file something with the CCA, but were not ready to file with the CCA by 5 p.m., (v) Mr. Richard's lawyers had called and requested that they be permitted to file after 5 p.m., and (vi) Mr. Marty's telephone call to her shortly before 5 p.m. on September 25, 2007 was about Mr. Richard's execution.

**INTERROGATORY NO. 10:**

Describe each action by Respondent on September 25, 2007 that constitutes incompetence in the performance of her duties of office.

**ANSWER:**

The State Commission objects to this interrogatory on the ground that it exceeds the scope of

permissible discovery under Rule 197 of the Texas Rules of Civil Procedure to the extent it fails to seek a specific legal or factual bases, in general terms, of the State Commission's claims or defenses. An interrogatory may not be used to require the responding party to marshal all of its available proof it intends to use at trial.

Subject to and without waiving this objection, please see the answer to Interrogatory No. 9, which is incorporated herein.

**INTERROGATORY NO. 11:**

Explain whether you contend that Respondent, on any date other than September 25, 2007, cast public discredit on the judiciary or the administration of justice and, if so, how.

**ANSWER:**

At this time, the State Commission's complaints are specific to the circumstances surrounding the September 25, 2007 Richard execution. Nonetheless, the State Commission reserves its right to amend its Formal Notice to add any additional charges as a result of information learned during the discovery process.

**INTERROGATORY NO. 12:**

Explain whether you contend that Respondent, on any date other than September 25, 2007, failed to perform her duties as Presiding Judge and, if so, how.

**ANSWER:**

At this time, the State Commission's complaints are specific to the circumstances surrounding the September 25, 2007 Richard execution. Nonetheless, the State Commission reserves its right to amend its Formal Notice to add any additional charges as a result of information learned during the discovery process.

**INTERROGATORY NO. 13:**

Explain whether you contend that Respondent, on any date other than September 25, 2007, was incompetent in the performance of her duties and, if so, how.

**ANSWER:**

At this time, the State Commission's complaints are specific to the circumstances surrounding the September 25, 2007 Richard execution. Nonetheless, the State Commission reserves its right to amend its Formal Notice to add any additional charges as a result of information learned during the discovery process.

**INTERROGATORY NO. 14:**

Explain in detail how the formal proceeding against Respondent preserves public confidence in the judiciary.

**ANSWER:**

The State Commission objects to this request on the ground that it is overly broad and vague. The State Commission further objects to this request on the ground that it is not reasonably calculated to lead to the discovery of admissible evidence.

**INTERROGATORY NO. 15:**

Please identify the name, address and phone number of any witnesses you intend to call at the hearing for the removal of Respondent.

**ANSWER:**

The State Commission objects to this request to the extent it seeks information related to rebuttal or impeachment witnesses. As exempted from discovery by Rule 192.3(d), any rebuttal or impeaching witnesses cannot reasonably be anticipated before trial.

Subject to and without waiving the foregoing, the State Commission may call one or more of the following witnesses:

Judge Sharon Keller  
c/o Chip Babcock  
JACKSON WALKER, LLP  
1401 McKinney Street, Suite 1900  
Houston, Texas 77010  
Direct: 713.752.4210  
(713) 752-4200 Telephone  
(713) 752-4221 Fax  
[cbabcock@jw.com](mailto:cbabcock@jw.com)

Judge Cheryl Johnson  
Mr. Abel Acosta  
Ms. Louise Pearson  
Texas Court of Criminal Appeals  
201 W. 14th Street  
Austin, Texas 78701  
(512) 463-1597 Telephone

Mr. Rick Weitzel  
1411 West Avenue Suite 100  
Austin, TX, 78701  
(512) 469-7943

**Mr. Edward Marty**  
545 CR 239  
Gatesville, TX , 76528

**Ms. Dorinda Fox**  
**Mr. Greg Weircioch**  
**Ms. Melissa Waters**  
**Texas Defender Services**  
**c/o SUSMAN GODFREY, LLP**  
**1000 Louisiana Street, Suite 5100**  
**Houston, Texas 77002**  
**(713) 653-7827 Telephone**  
**(713) 654-3380 Fax**  
**[nmanne@susmangodfrey.com](mailto:nmanne@susmangodfrey.com)**

VERIFICATION

STATE OF TEXAS           §  
                                      §  
COUNTY OF TRAVIS       §

BEFORE ME, the undersigned authority on this day personally appeared SEANA WILLING, known to me to be the person whose name is subscribed to the foregoing instrument, who having been duly sworn, on oath, deposed and said that he/she has read the foregoing Answers to Interrogatories and that the answers to these Interrogatories are true and correct based upon her personal knowledge or information obtained from other persons.

Seana B. Willing  
Affiant

SUBSCRIBED TO AND SWORN TO before me on this 22 day of APRIL, 2009.

Katherine Mitchell  
Notary Public In and For the State of Texas

1086774v1 4/16/2009

