



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

Document Scanning Lead Sheet

Aug-24-2017 4:14 pm

Case Number: CPF-16-515308

Filing Date: Aug-24-2017 4:11

Filed by: LINDA FONG

Image: 06000144

ORDER

COMMISSION ON JUDICIAL PERFORMANCE VS. ELAINE M. HOWLE ET AL

001C06000144

Instructions:

Please place this sheet on top of the document to be scanned.

FILED

Superior Court of California
County of San Francisco

AUG 24 2017

CLERK OF THE COURT

BY:  Deputy Clerk

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
Department 302**

COMMISSION ON JUDICIAL
PERFORMANCE,

Petitioner/Plaintiff,

vs.

ELAINE M. HOWLE, in her official
capacity as CALIFORNIA STATE
AUDITOR, and the CALIFORNIA
STATE AUDITOR'S OFFICE,

Respondents/Defendants.

Case No.: CPF-16-515308

**ORDER REQUESTING
SUPPLEMENTAL BRIEFING**

The Court heard argument in the above-referenced matter on August 17, 2017. During argument both parties referred to Article 6, section 18(i) of the California Constitution which gives the Commission on Judicial Performance (CJP) the power to make rules for the investigation of judges and states "The Commission may provide for the confidentiality of complaints to and investigations by the Commission."

The parties have substantially differing interpretations of whether documents designated confidential by the CJP pursuant to the above provision can or should be produced to the

1 California State Auditor (Auditor). Neither party, however, presented any argument or briefing
2 regarding the meaning of the term “confidential” in Article 6, section 18(i). Does the
3 designation of documents as “confidential” mean that the documents may *never* be produced to
4 the Auditor or is there a balancing test that must be undertaken before deciding whether some
5 documents may be released? *See, e.g., Sander vs. State Bar of California, (2013) 58 Cal. 4th 300.*
6 Can the documents be released in a redacted or “de-identified” form, that is, without judges’
7 names or other information that could be used to identify individual judges so as to preserve the
8 confidentiality of investigations?


9 The Court requests supplemental briefing on the issue of the meaning of the term
10 “confidential” in Article 6, section 18(i) of the California Constitution. Briefing should include
11 the legislative history of this provision and relevant case law, if any.

12 The CJP shall file its brief on Friday, September 8, 2017. The State Auditor shall file her
13 opposing brief on Friday, September 22, 2017 and the CJP may file an optional reply brief on
14 Friday, September 29, 2017.

15 If the parties wish to request a hearing they should contact the Court’s clerk. The Court
16 vacates its prior order of submission and will take this matter under submission after the filing
17 of the reply brief or the date of further hearing whichever comes later.

18
19 SO ORDERED.

20
21
22 Date: 8/24/17


HON. SUZANNE R. BOLANOS
Judge of the Superior Court

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

COMMISSION ON JUDICIAL
PERFORMANCE,

Petitioner/Plaintiff,

vs.

ELAINE M. HOWLE, in her official
capacity as CALIFORNIA STATE
AUDITOR, and the CALIFORNIA
STATE AUDITOR'S OFFICE,

Respondents/Defendants.

Case No.: CPF-16-515308

**CERTIFICATE OF MAILING
[CCP 1013a(4)]**

I, Linda Fong, a deputy clerk of the Superior Court of California, County of San Francisco, certify that I am not a party to the within action.

On August 24, 2017, I served the attached **ORDER REQUESTING SUPPLEMENTAL BRIEFING** by placing a copy thereof in a sealed envelope, addressed as follows:

James M. Wagstaffe, Esq.
Michael Von Loewenfeldt, Esq.
KERR & WAGSTAFFE LLP
101 Mission Street, 18th Floor
San Francisco, CA 94105

Myron Moskovitz, Esq.
Sherri Kaiser, Esq.
William Stein, Esq.
MOSKOVITZ APPELATE TEAM
90 Crocker Avenue
Piedmont, CA 94611

and, I then placed the sealed envelopes in the outgoing mail at 400 McAllister Street, San Francisco, CA 94102 on the date indicated above for collection, attachment of required prepaid postage, and mailing on that date following standard court practices.

Dated: August 24, 2017

T. MICHAEL YUEN, Clerk

by: 

Linda Fong, Deputy Clerk