

To be argued by  
GERALD STERN

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION -- FIRST DEPARTMENT

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In the Matter of the Application of	:	Index Nos. 08489/7
GARY NICHOLSON and MARIE M.	:	41005/7
LAMBERT, New York County Surrogate,	:	41006/7
	:	41007/7
Petitioners-Appellants-Respondents	:	41008/7
	:	41009/7
For a judgment pursuant to CPLR Article	:	
78 and Section 2304	:	
	:	
- against -	:	
	:	
STATE COMMISSION ON JUDICIAL CONDUCT and	:	
GERALD STERN, Administrator of the State	:	
Commission on Judicial Conduct,	:	
	:	
Respondents-Respondents-Appellants	:	
	:	
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BRIEF FOR RESPONDENTS-RESPONDENTS-APPELLANTS

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<b>ONE COPY RECEIVED</b>	
DATE <u>9/12/79</u> HOUR <u>11<sup>30</sup></u> a.m.	
Kramer, Lowenstein, Messen, Kamin & Soll	
BY <u>OB</u>	

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and function of the court in resolving a challenge to the Commission under the circumstances presented.

Some fifty times, for example, the Surrogate's brief refers to the items in the complaint as "charges." There are no "charges." As this Court recognized in Nicholson I, an Administrator's Complaint, like a private complaint received by the Commission under Section 44(1) of the Judiciary Law, is merely a set of preliminary allegations and serves as the starting point of an investigation. Jud. Law §44(2); Nicholson II, supra, 414 N.Y. 2d at 552. Nonetheless, appellants would treat items stated in the Amended Administrator's Complaint as if they were the formal charges in a "Formal Written Complaint" which can only follow an investigation. Compare, Jud. Law §44(4). That is, they would effectively prohibit the Commission from investigating or even framing an Administrator's Complaint until it possessed the specific facts and proof of wrongdoing which, of course, only the investigation itself could uncover.

What is ignored is that the Commission is a disciplinary body which proceeds solely on the basis of a confidential investigation predicated on a complaint as the vehicle for determining whether the judge should be the subject of a disciplinary proceeding. Unless the Commission determines that the complaint on its face lacks merit, the law requires that the Commission "shall conduct an investigation of the complaint" (Jud. Law §44[1] [emphasis added]), and the purpose of that investigation is to determine whether or not charges -- i.e., a Formal Written Complaint -- are to be brought (Jud. Law §44[4]).

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