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JACKSON WALKER L.L.P.  
ATTORNEYS & COUNSELORS

COPY

Charles L. Babcock  
(713) 752-4210 (Direct Dial)  
(713) 308-4110 (Direct Fax)  
cbabcock@jw.com

August 16, 2010

**Via Hand Delivery and Electronic Filing**

Honorable Wallace B. Jefferson  
Chief Justice  
Texas Supreme Court  
Supreme Court Building  
201 West 14<sup>th</sup>, Room 104  
Austin, Texas 78701

Re: Inquiry Concerning Judge No. 96, The Honorable Sharon Keller

Dear Chief Justice Jefferson:

As you know, I represent Judge Sharon Keller, the Presiding Judge of the Texas Court of Criminal Appeals, in a formal proceeding brought against her by the State Commission on Judicial Conduct (the "Commission"). In April of 2009, at the request of the Commission, Your Honor's Court appointed a Special Master to receive evidence and make findings of fact in the formal proceeding. After a four-day trial in August of 2009, the Honorable David Berchelmann, Jr., your appointed Special Master, made detailed findings of fact, including findings that Judge Keller "did not violate any written or unwritten rules or laws," that she should not be sanctioned, and that the public outcry against her was largely the product of a series of fabrications peddled to the press by the Texas Defender Service. The Examiner and Special Counsel, who himself was one of the persons who filed a complaint with the Commission, objected to Judge Berchelmann's findings, and the Commission conducted a hearing this past June in which it specifically declined to receive additional evidence.

Following the hearing, on July 16, 2010, the Commission entered its Findings, Conclusions, and Order of Public Warning (the "Order"). In the Order, the Commission made its own findings which completely ignored those of Judge Berchelmann and, in fact, referred to those findings as mere "observations." Based on its new findings, the Commission issued a "public warning" against Judge Keller, which it said was authorized by Article 5, Section 1-a(8) of the Texas Constitution. Contrary to the Commission's Order, Article 5, Section 1-a(8) does not authorize the issuance of a public warning against a judge. The Constitution plainly states that, once the Commission initiates formal proceedings, as it did against Judge Keller, a public warning is foreclosed and the Commission may only dismiss the charges, issue a censure, or recommend removal of the judge:

*If, after formal hearing, or after considering the record and report of a Master, the Commission finds good cause therefor, it shall issue an order of public*

1401 McKinney Street, Suite 1900 • Houston, Texas 77010 • (713) 752-4200 • fax (713) 752-4221

*censure or it shall recommend to a review tribunal the removal or retirement, as the case may be of the person in question . . .*

TEX. CONST. art. 5, § 1-a(8) (emphasis added).

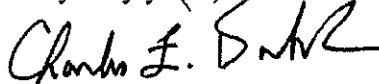
Judge Keller wishes to challenge the Commission's Order. To that end, on July 29, 2010, she filed a Petition for a Writ of Mandamus in your Court and moved for an emergency stay of the Order, which the Court denied today.

In light of the Court's action today, Judge Keller is asking Your Honor, pursuant to Section 33.034(b) of the Texas Government Code, to appoint justices either for a trial de novo or for an appellate-like review based on the trial record. *See* Tex. Gov't Code § 33.034(e). As she pointed out in her Mandamus Petition and Emergency Motion to Stay, there is no de novo review from a formal proceeding, but there is also no appellate-like review of a public warning. Judge Keller has had a trial, at which she prevailed, and should not be put to the expense of a new trial. In her public statements to the press, the Commission's Executive Director has agreed that a new trial would be a "waste of resources." A new trial would also mean that this Court's appointment of Judge Berchelmann as Special Master, and the time and effort he expended holding the hearing and drafting his Findings of Fact, all would be wasted.

This is to advise Your Honor and the Court that Judge Keller wishes to avail herself of her right to oppose the Commission's unconstitutional behavior in whatever forum you deem appropriate. She frankly does not know what that is, and is frustrated by the fact that it is the Commission's unconstitutional Order which has created this conundrum. In writing this letter she does not waive any rights and makes this request subject to the arguments found in her Mandamus Petition and Motion to Stay.

Accordingly, The Honorable Sharon Keller, Presiding Judge of the Texas Court of Criminal Appeals, requests the appointment of a special court to review the July 16, 2010, Order of the Commission entered in *Inquiry Concerning Honorable Sharon Keller, Judge No. 96*. This request is made pursuant to Section 33.034 of the Texas Government Code. She also asks that you give notice to the parties as to which appellate standard we are operating under and further, in light of today's ruling, explicitly state that the special court should consider the constitutionality of the Order.

Very truly yours,



Charles L. Babcock

cc: Mr. John J. (Mike) McKetta, III  
Graves Dougherty Heaton & Moody  
401 Congress Avenue, Suite 2200  
Austin, Texas 78701

*Via E-Mail*

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

*Via E-Mail*