

NEW YORK STATE SENATE  
STANDING COMMITTEE ON JUDICIARY

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PUBLIC HEARING IN THE MATTER OF  
AN EXAMINATION OF THE JUDICIAL DISCIPLINARY PROCESS  
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Senate Hearing Room  
250 Broadway  
19th Floor  
New York, N.Y.

September 24, 2009  
Thursday  
10 a.m.

BEFORE:            Senator John Sampson  
                         Chair  
                         Judiciary Committee

                         Senator Bill Perkins  
                         Chair  
                         Corporations, Authorities & Commissions

                         Senator George D. Maziarz

                         Senator Eric Adams

                         Senator Ruben Diaz

OTHER STAFF MEMBERS:

                         Shelly Mayer  
                         Majority Counsel

                         Lisa Lashley  
                         Counsel

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1 Thank you very much.

2 MS. GKANIOS: Senators, thank you.

3 SENATOR SAMPSON: Regina Felton. Is  
4 she around?

5 MS. FELTON: Yes, I am here, right.

6 SENATOR SAMPSON: Ms. Felton, you  
7 have ten minutes. The clock is running.

8 Mr. Higbee, are you ready?

9 MR. HIGBEE: Yes.

10 SENATOR SAMPSON: Okay.

11 MS. FELTON: Thank you, Senator  
12 Sampson.

13 My name is Regina Felton, I have been  
14 practicing in Brooklyn, New York in the  
15 Bedford-Stuyvesant area since 1990.

16 Prior to that I was -- I worked in the  
17 Manhattan D.A.'s office, I was senior  
18 counsel to the American Stock Exchange,  
19 Senior Special Counsel to the New York Stock  
20 Exchange, Assistant General Counsel to a  
21 securities firm on Wall Street and also head  
22 of market surveillance for that particular  
23 firm.

24 When I left and went to

1 Bedford-Stuyvesant I did so with the express  
2 desire to bring a kind of service to  
3 indigent people who lived in the area and  
4 who were underrepresented, since I had honed  
5 my skills.

6 So you can imagine when I encountered a  
7 judge whose name is Arthur M. Schack who  
8 sits in Kings County and who I had three  
9 cases before and wound up as a solo  
10 practitioner in Bedford-Stuyvesant on the  
11 front page of the Law Journal on three  
12 successive occasions.

13 And I point out to you that in the July  
14 8th, 2008 Law Journal, lawyer ordered to pay  
15 fees after pursuing frivolous suit.

16 In the August 12, 2008 New York Law  
17 Journal, jail fines given to solo who  
18 withheld downpayment.

19 In the August 14th section of The New  
20 York Times, court sanctions attorney \$10,000  
21 over \$40,000 in costs for failing to return  
22 downpayment.

23 SENATOR SAMPSON: So the million  
24 dollar question is did that occur?

1           What the judge is indicating that you  
2           did, did you withhold the downpayments, or  
3           what did you do to warrant, I guess, the  
4           actions that the judge took?

5           MS. FELTON:       To give you the short  
6           answer, and I wrote a letter to the Law  
7           Journal, Judge Schack actually was under a  
8           restraining notice not to adjudicate the  
9           particular case.

10           I have had three cases before him and  
11           my first encounter with him was in 2003 and  
12           while I thought it was somewhat strange  
13           having practiced, I guess, at that time more  
14           than 20 years, I just believed that -- well,  
15           if this was a foreclosure, my three clients  
16           were over the age of 80, two of them were  
17           closer to 90.

18           The houses all were located in  
19           Bedford-Stuyvesant, with one exception in  
20           Clinton hill, and the seniors were under  
21           educated and also indigent, that's two.

22           One of them I represented pro bono and  
23           incurred the ire of the judge when I  
24           resisted a foreclosure, that's how I got on

1 his radar.

2 I went to the Appellate Division when  
3 for this foreclosure he had issued something  
4 called a Writ of Assistance which is  
5 inappropriate for a person who is still in  
6 title, if there had been a foreclosure and a  
7 Writ of Assistance had been issued to remove  
8 that person so that the new owner could take  
9 possession, the Writ of Assistance would  
10 have been appropriate.

11 But there were some other anomalies as  
12 well and those anomalies were that the same  
13 person was appointed by this judge as both  
14 the referee and the receiver.

15 I objected --

16 SENATOR SAMPSON: When you say the  
17 same person appointed.

18 MS. FELTON: The judge appointed an  
19 individual, both as the receiver and as the  
20 referee.

21 SENATOR SAMPSON: Is that odd?

22 MS. FELTON: That's a conflict of  
23 interest.

24 And so when I asked him -- well, when I

1 pointed this out --

2 SENATOR SAMPSON: As the referee and  
3 the --

4 MS. FELTON: Receiver, the receiver  
5 is the person who collects the rent.

6 SENATOR SAMPSON: And the referee is  
7 the one who sells the property.

8 MS. FELTON: Exactly. In effect what  
9 he had done is he had given title to this  
10 property to this one individual and had  
11 given him the right to collect the rents and  
12 then had directed that my client, who was  
13 still in title and the foreclosure, a  
14 judgment of foreclosure had not been issued,  
15 and he had directed that she pay rent.

16 Now, she's in title, she's the owner of  
17 the property and so I was doing this pro  
18 bono and had an obligation to run back and  
19 forth to the Appellate Division.

20 SENATOR SAMPSON: This is the  
21 O'Therry case.

22 MS. FELTON: This is the 2003 and  
23 this is how I first became acquainted with  
24 Judge Arthur M. Schack.

1           He wrote some pretty bizarre opinions  
2           in that particular case, but in any event I  
3           was going back and forth with the Appellate  
4           Division and I was successful.

5           At some point when I couldn't handle it  
6           any more because I was doing it -- pro bono  
7           legal services took over.

8           My next case with Judge Schack had to  
9           do with a senior citizen who was close to 90  
10          years old and whose deed had twice been  
11          forged.

12          The first time the deed was forged  
13          another attorney handled the case and got a  
14          -- and had gotten a judgment cancelling  
15          title in the company who had forged the  
16          deed.

17          The company was directed to -- all  
18          equitable interests that that company had,  
19          the company was United Equities, was  
20          cancelled.

21          The company nevertheless transferred  
22          title again under a second forged deed.

23          They removed -- the person, the person  
24          who then had title, forged title, removed



1 all of my client's personal possessions from  
2 the house, changed the locks and brought  
3 eviction actions against him.

4 Now, this company was served by the  
5 Secretary of State.

6 The judge wrote the decision saying  
7 that I had served the wrong company,  
8 notwithstanding the fact that the company  
9 had been served by the Secretary of State  
10 and my client, the senior citizen who again  
11 was elderly, the only asset he owned was  
12 this house, and he was mortified by the fact  
13 that he had been removed from the property  
14 and the police had been called to remove him  
15 as a trespasser.

16 And I, because I'm in the  
17 Bedford-Stuyvesant community, attempted to  
18 represent him.

19 Now the issue here is, as far as I am  
20 concerned, is an obligation that I feel that  
21 we have, if we can, to represent the elderly  
22 and the indigent, and it was based on the  
23 decisions written by Judge Schack, he was  
24 removing my right to represent the senior

1 citizen.

2 Now, the issues that I brought to the  
3 Commission on Judicial Conduct were as  
4 follows; first I indicated that this judge  
5 had an underground of writing decisions that  
6 were never filed and therefore not  
7 appealable.

8 Now what I do I mean by that? Where a  
9 judge issues an order, the order obviously  
10 must be followed. However if the judge does  
11 not file the order, then you cannot appeal.  
12 You cannot file a Notice of Appeal, you  
13 cannot go to the Appellate Division. If  
14 he's retaining that file in his chambers,  
15 then you are either forced to do exactly  
16 what the judge says, or you can write to the  
17 Commission on Judicial Conduct, which I did.

18 Now I listened very carefully to when  
19 Robert Tabeckian spoke on June 8th, 2009,  
20 and he articulated the fact that the  
21 commission's objective was not only to  
22 investigate complaints, but also to make  
23 sure that the commission maintains an  
24 independent judiciary.

1 I don't see how it is that the  
2 commission can take on two competing tasks,  
3 because it is a conflict of interest.

4 The commission then becomes or aligns  
5 itself with the judges and gives up it's  
6 duty to the public to investigate and keep  
7 the courts unbiased.

8 SENATOR SAMPSON: Some judges would  
9 disagree with that.

10 MS. FELTON: So A, in writing to the  
11 Commission on Judicial Conduct where I  
12 explained my history with this judge, B,  
13 with respect to this one senior, that the  
14 judge completely misstated the facts, now  
15 you're an attorney, Senator Sampson, and we  
16 do know that the judge has a prerogative to  
17 interpret the facts, but he has no judicial  
18 prerogative to create new facts in order to  
19 get a certain result.

20 In the cases that I had before --

21 SENATOR SAMPSON: That's called  
22 judicial activism.

23 MS. FELTON: Well, all right. In the  
24 cases that I had before Justice Schack, he

1           actually created new facts, he created a  
2           fact pattern that I was able to disprove,  
3           and notwithstanding, I wind up on the front  
4           page of the paper without the opportunity to  
5           respond and without the opportunity to  
6           continue representing clients in that  
7           community without having them look askance  
8           at me because my pristine reputation had  
9           been sullied.

10                  Secondly, I had a second case with --  
11           the third case with Judge Schack, again he  
12           exercised his judicial prerogative to create  
13           and misstate the facts, and at the time he  
14           adjudicated a case where my client suffered  
15           -- his family had brought a petition  
16           questioning his mental health and the judge  
17           sitting in the mental health part issued a  
18           restraining notice.

19                  That restraining notice forbade any  
20           adjudication of that case.

21                  Notwithstanding the fact that this was  
22           called to his attention, Justice Schack  
23           adjudicated the case.

24                  This was a case again involving

1           lucrative property of a person who was  
2           almost 90 years old, and now a person who's  
3           mental capacity was being challenged by the  
4           family and where there was a restraining  
5           notice in effect directing that nothing  
6           happen until the mental status of my client  
7           was determined.

8           I again found myself on the front page  
9           of the paper with more than \$40,000 in costs  
10          and fees ascribed to me, notwithstanding the  
11          fact that there was a restraining notice.

12          The court issued orders in this case as  
13          well, and in this particular case a motion  
14          was made where the Plaintiff's attorney and  
15          my client and I were both named as  
16          Defendants, I was named because I was the  
17          escrow agent holding the downpayment in my  
18          escrow account, and my client, obviously,  
19          also was named.

20          The attorney who represented Plaintiff  
21          wanted to amend the complaint.

22          Somehow I was not served,  
23          notwithstanding even though I did not  
24          appear, a default judgment could have been

1 entered, though Justice Schack issued an  
2 order which never was filed in which he  
3 directed that the Sheriff pick me up and  
4 take whatever action was necessary in order  
5 to bring me to the court.

6 Now, in addition when I learned of the  
7 order I attempted to file a Notice of  
8 Appeal, the order had never been filed.

9 SENATOR SAMPSON: That's right, you  
10 can't file a Notice of Appeal if the order  
11 hasn't been filed.

12 MS. FELTON: That's right, I  
13 attempted to bring a Writ of Mandamus  
14 directing the judge to file the order so  
15 that I could appeal and get a stay.

16 Well, what happened is I went to the  
17 court, I notified the State Attorney  
18 General's office, the assistant State  
19 Attorney General appeared, the Appellate  
20 Division on the spot filed the Notice of  
21 Appeal, which is highly unusual, you do not  
22 file in the Appellate Division, you don't  
23 file the Notice of Appeal in the Appellate  
24 Division, but rather you file it in the

1 State Supreme Court, the Appellate Division  
2 filed the Notice of Appeal to two orders on  
3 the spot, revised my order by hand, which is  
4 also something highly unusual, where the  
5 Court Clerk is revising an attorney's  
6 papers, and I was told that I didn't get the  
7 stay but I should appear in the Judge's part  
8 for a hearing.

9 Now, the judge had his law secretary  
10 call me on approximately -- well, actually  
11 four occasions, and I was so concerned about  
12 the nature of the conversation that I was  
13 having with the Judge's principal law  
14 secretary, I placed the phone on the  
15 speaker, turned on my dictaphone and tape  
16 recorded each of the four conversations  
17 which I then settled on notice with the  
18 Court Clerk so that he could revise the  
19 transcript and I sent a copy to my  
20 adversary, no one objected to the content or  
21 the accuracy of the conversations.

22 The law clerk scheduled a conference in  
23 each of those four conversations.

24 When I appeared and without notice I

1 was subjected to a contempt hearing.

2 Now mind you there was a restraining  
3 notice in this case, so the judge is  
4 continuing to adjudicate the case  
5 notwithstanding the restraining notice.

6 I show up unprepared for a contempt  
7 hearing without notice under the New York  
8 State judiciary law that is supposed to say  
9 warning, you could go to jail and all of  
10 that.

11 SENATOR SAMPSON: Correct.

12 MS. FELTON: And he finds me in  
13 contempt, directs me to pay the money from  
14 my escrow account and a certain sum of money  
15 as a penalty for not having turned the money  
16 over earlier, notwithstanding the  
17 restraining notice.

18 When I appeared in court, I had a  
19 certified check from my escrow account, but  
20 I did not have the check that he had  
21 ascribed as a penalty.

22 SENATOR SAMPSON: How much was that?

23 MS. FELTON: \$6,678. I indicated to  
24 the judge that I had filed an appeal, the



1 Appellate Division had taken in the Notices  
2 of Appeal.

3 I perfected the appeal, I advised the  
4 judge that I had perfected the appeal and he  
5 said that I had an hour within which to turn  
6 over this \$6,700 and would I do that?

7 When I said no, that I would not, he  
8 placed me in handcuffs, I have the  
9 transcript, and I was taken to the court  
10 officer's lounge, I guess that's what it  
11 was, where I was handcuffed to a chair, a  
12 Sheriff came and picked me up, I spent 11  
13 days on Riker's Island.

14 THE AUDIENCE: Remove that judge,  
15 please.

16 MS. FELTON: I spent 11 days on  
17 Riker's Island, a friend of mine learned of  
18 my incarceration and went to the judge to  
19 negotiate my release.

20 The judge indicated that my friend, a  
21 retired police officer, had to go to Riker's  
22 Island and get the \$30,000 check that I had  
23 in court on the day of my arrest and take  
24 that check with his check to the home of my

1           adversary's lawyer before he would issue an  
2           order to release me.

3                        So some 300 miles driving to Riker's,  
4           driving out to Long Island to this  
5           attorney's house, going back out to Riker's,  
6           from 9:00 that morning I was released at  
7           10:00 that evening.

8                        I didn't know that the judge had, after  
9           I had been removed from the courtroom, had  
10          found that I was in contempt and had also  
11          given me another fine of \$500 -- sorry \$500.

12                       In addition to that about three months  
13          after I had been released the judge issued  
14          an Order to Show Cause sua sponte where he  
15          determined that I should pay a sanction of  
16          \$10,000 for having violated his order in the  
17          first place, notwithstanding the fact that  
18          when he issued the order there was a  
19          restraining notice.

20                       The Order to Show Cause is supposed to  
21          be served in a certain kind of way with the  
22          warnings and personal service, it was not.

23                       The order also indicated and the order  
24          happened to have been published in the New

1 York Law Journal, something I have never  
2 seen in all of my years of practice.

3 And so again I wind up in the New York  
4 Law Journal.

5 I was told -- or the order, the Order  
6 to Show Cause indicated that I either appear  
7 under threat of arrest or make the \$10,000  
8 payment under the threat of arrest.

9 SENATOR SAMPSON: So what happened?

10 MS. FELTON: I went to court, I  
11 submitted papers, I tendered a cashiers  
12 check for \$10,000 to the Lawyers Fund for  
13 Client Protection.

14 Now, the Grievance Committee examined  
15 my escrow account, there was nothing wrong  
16 with it.

17 The only entries, the only entries in  
18 the account were those of that accrued  
19 interest.

20 I haven't been found to have engaged in  
21 any kind of wrongdoing whatsoever.

22 This judge, for whatever reason, has  
23 targeted me.

24 Now, I understand that judges are

1           supposed to be given some kind of leeway in  
2           terms of the way that they run their court.

3           But there is no question A, that this  
4           judge lied in his decisions, and B, that I  
5           have been singled out for whatever reason,  
6           and C, that the Commission on Judicial  
7           Conduct has done absolutely nothing.

8           Now I have not written to the  
9           Commission on Judicial Conduct one time, but  
10          I believe more than half a dozen times.

11          What bothers me is not only the fact  
12          that the order of arrest and the payment of  
13          the fines and the issuance of the Orders to  
14          Show Cause do not appear as entries in the  
15          unified court system and it's supposed to,  
16          but this judge seems to have deliberately  
17          tried to prevent me from representing  
18          indigent seniors in my community when I have  
19          chosen to do so to protect the only asset  
20          that they had, which was the house in which  
21          they lived.

22          Now the --

23          SENATOR SAMPSON:        The question is,  
24          because we have to end in a minute because

1 time has extended, you wrote to the judicial  
2 conduct committee?

3 MS. FELTON: Many times.

4 SENATOR SAMPSON: Specifically about  
5 the incident that occurred, correct?

6 MS. FELTON: Yes.

7 SENATOR SAMPSON: Have you gotten any  
8 response?

9 MS. FELTON: Oh, yes, I did.

10 SENATOR SAMPSON: What has the  
11 response been?

12 MS. FELTON: There was no indication  
13 of wrongdoing.

14 SENATOR SAMPSON: Senator Perkins.

15 SENATOR PERKINS: You said you sent  
16 letters to the commission, can we get copies  
17 of those?

18 MS. FELTON: I gave you a package  
19 with reference to one of those letters, and  
20 I understand from Mr. Spotts that he scanned  
21 it into your -- I guess your computer, I  
22 have additional hard copies here, if you  
23 would like to have one.

24 This is only one of the cases and this

1 was the most egregious, because I wound up  
2 in Riker's Island.

3 But I have all of the -- I have all of  
4 the complaints which I have written, I have  
5 all of their responses in which they said  
6 that there was no wrongdoing.

7 SENATOR PERKINS: Did they indicate  
8 the basis upon which they came to their  
9 conclusion?

10 MS. FELTON: Well, I wrote, in fact I  
11 was so dumbfounded by the fact that there  
12 was no investigation that I knew of, because  
13 no one called me back, I actually called the  
14 author of the letter and asked her what was  
15 the basis for closing the case, and I was  
16 told they had -- that I had to do it in  
17 writing, I then wrote and then I was told  
18 that it was confidential and I wasn't  
19 entitled to know.

20 SENATOR SAMPSON: So, Ms. Felton, one  
21 thing you can rest assured I will talk --  
22 Senator Maziarz, do you have any questions?

23 SENATOR MAZIARZ: No.

24 SENATOR SAMPSON: One thing, you can

1 rest assured that I will follow-up with  
2 respect to this and I guess have a  
3 conversation with the Commission on Judicial  
4 Conduct, especially when something of this  
5 magnitude seems to be very important that  
6 you can't just receive a letter, and I can  
7 understand it being confidential, because  
8 it's true, certain issues and procedures are  
9 confidential.

10 But I will -- this is why we are having  
11 hearings like this.

12 MS. FELTON: Well, thank you very  
13 much, I appreciate that, but I also would  
14 like you to weigh the fact that my  
15 reputation has been tarnished to a degree  
16 that I don't ever think that I can recover  
17 it.

18 I have never heard of a solo  
19 practitioner, my office is on the corner of  
20 Fulton and Marcy in the heart of  
21 Bedford-Stuyvesant.

22 When is it that a solo practitioner  
23 winds up repeatedly on the front page of the  
24 New York Law Journal in such disparaging

1 terms?

2 I have never heard of it. And the  
3 attorney Mark Dwyer, the one who went to  
4 Canada and forged all those papers, he got  
5 less press than I did.

6 SENATOR SAMPSON: Thank you very  
7 much, Ms. Felton, thank you. Mr. Higbee.

8 MR. HIGBEE: Yes.

9 SENATOR SAMPSON: Mr. Higbee, ten  
10 minutes.

11 MR. HIGBEE: Senator Sampson, thank  
12 you for holding these hearings. My name is  
13 Douglas Higbee, I have been embroiled in a  
14 matrimonial and then some since 1944.

15 I am going to fast forward up to where  
16 my wife's sister, an attorney here  
17 practicing in New York and Connecticut using  
18 her power beyond that was employed by the  
19 Office of Attorney General right up the  
20 street.

21 And at which time thought that she  
22 didn't -- and being part of a fraud sexual  
23 abuse allegation of me in January 1997,  
24 subsequently leading to my arrest, March 20