

**STATE OF VERMONT
JUDICIAL CONDUCT BOARD**

JCB Docket No.: 16.004

In Re:)
Assistant Judge Paul Kane) **RESPONSE TO COMPLAINT**
)
)

NOW COMES Assistant Judge Paul Kane (hereinafter "PK") by his attorney, Melvin Fink, and in Response and by way of Answer to the Formal Complaint filed in the above-captioned matter, says as follows:

1. PK denies that all alleged Judicial Code Violations set forth in the Formal Complaint occurred while serving as Assistant Judge in Windham County, Vermont.
2. PK denies the allegations that he violated Canon 5 after becoming a candidate for judicial office.
3. PK denies those allegations in ¶3 that his Kay Tolaro was showing signs of dementia at the time that she moved into his home. Such allegations are impertinent and for the purpose of prejudicing Assistant Judge Paul Kane by innuendo and should be struck.
4. PK admits the allegations contained in ¶4. However, such allegations are impertinent and only serve to prejudice Assistant Judge Paul Kane by innuendo and such allegations should be struck.
5. PK is without sufficient information to either admit or deny the allegations contained in ¶5. However, such allegations are impertinent and only serve to prejudice Assistant Judge Paul Kane by innuendo and such allegations should be struck.
6. PK is without sufficient information to either admit or deny the allegations contained in ¶6, therefore, denies the same. However, such allegations are impertinent and only serve to prejudice Assistant Judge Paul Kane by innuendo and such allegations should be struck.
7. PK admits the allegations contained in ¶7.
8. PK denies the allegations contained in ¶8 as those allegations relate to his assisting Ms. Tolaro. Ms. Tolaro gifted the said sum to PK. However, such allegations are impertinent and only serve to prejudice Assistant Judge Paul Kane by innuendo and such allegations should be struck.
9. PK admits the allegations contained in ¶9, excepting those allegations describing the relationship between Kay Tolaro and Gloria and James Carr. Gloria Carr was Catherine Tolaro's relative by marriage.

10. PK admits the allegations contained in ¶10.
11. PK admits the allegations contained in ¶11.
12. PK denies the allegations contained in ¶12 relative to Respondent making a withdrawal with a power of attorney. However, such allegations are impertinent and only serve to prejudice Assistant Judge Paul Kane by innuendo and such allegations should be struck.
13. PK admits the allegations contained in ¶13, excepting the description of Mr. Olbrych as a personal acquaintance of PK. Mr. Olbrych was a business acquaintance of PK, who received a business loan from Ms. Tolaro's funds.
14. PK denies the allegations contained in ¶14. PK withdrew funds from Ms. Tolaro's account for the purpose of transacting a business loan for her. During the course of questioning (more than four (4) years later) and without the benefit of records before him, PK recalled that the monies withdrawn in May of 2011 were from an account he recalled as joint, for the reason that more than one person had access to the account. However, such allegations are impertinent and only serve to prejudice Assistant Judge Paul Kane by innuendo and such allegations should be struck.
15. PK admits the allegations contained in ¶15, excepting those allegations which describe Mr. Carrier, the borrower, as a coworker.
16. PK admits the allegations contained in ¶16 describing a second installment of a business loan to Mr. Olbrych.
17. PK admits the allegations contained in ¶17, excepting those allegations that allege that PK sometimes deposited loan payments into his own accounts. From time to time, PK was reimbursed for expenses advanced for his Aunt Kay from such loan payments.
18. PK denies the allegations contained in ¶18 of the Complaint. PK, in the absence of any other appointment, deposited funds into Ms. Tolaro's account and provided reimbursement for her expenses.
19. PK denies the allegations contained in ¶19 of the Complaint. In the absence of other appointment, PK negotiated with Carrier for the payment of funds that otherwise would not have been made.
20. PK admits the allegations contained in ¶20. By way of further response, PK purchased an annuity as an investment for Kay Tolaro with designations, from the advice of professionals that would allow him to liquidate portions of the annuity as they might be needed for Ms. Tolaro's care.
21. PK admits the allegations contained in ¶21, as those allegations relate to his filing an Application for Residence. As to the allegations concerning correspondence of Attorney Chris Moore, PK, upon information and belief, says that once it was brought to the attention of Attorney Moore that his correspondence was in error, Attorney Moore corrected such information to Ms. French and others.

22. PK admits the allegations contained in ¶22.
23. PK admits the allegations contained in ¶23.
24. PK admits the allegations contained in ¶24.
25. PK admits the allegations contained in ¶25.
26. PK denies the allegations contained in ¶26.
27. PK is without sufficient information to either admit or deny the allegations contained in ¶27, and therefore, denies the same. By way of further answer, PK says that Respondent subsequently learned that there was a payment made and directed to People's Bank.
28. PK denies the allegations contained in ¶28 of the Complaint. By way of further answer, PK says that the distribution DID flow to the Estate.
29. PK admits the allegations contained in ¶29.
30. PK admits the allegations contained in ¶30.
31. PK admits the allegations contained in ¶31.
32. PK is without sufficient information to either admit or deny the allegations contained in ¶32. By way of further answer, it appears that Attorney Moore's estimates of value may not have been fully accurate.
33. PK admits the allegations contained in ¶33.
34. The allegations contained in ¶34 are not directed toward PK; therefore, he neither admits nor denies the same.
35. The allegations contained in ¶35 are not directed toward PK; therefore, he neither admits nor denies the same.
36. PK is without sufficient information to either admit or deny the allegations contained in ¶36.
37. PK is without sufficient information to either admit or deny the allegations contained in ¶37.
38. PK admits the allegations contained in ¶38.
39. PK admits the allegations contained in ¶39.
40. PK is without sufficient information to either admit or deny the allegations contained in ¶40.

41. PK is without sufficient information to either admit or deny the allegations contained in ¶41.
42. PK is without sufficient information to either admit or deny the allegations contained in ¶42.
43. PK is without sufficient information to either admit or deny the allegations contained in ¶43.
44. PK admits the allegations contained in ¶44.
45. PK denies the allegations contained in ¶45, as to PK personally receiving \$10,000 (ten-thousand dollars). The settlement with Carrier was understood at all times to be funds of the Tolaro Estate.
46. PK denies the allegations contained in ¶46 that refer to the Respondent filing a Written Statement of Claim. Rather, a Statement of Claim was prepared by his attorney, who miscalculated the amount for caring for Ms. Tolaro. When it was later determined that the amount was erroneously twice the amount of the actual claim, such notification was provided to the Probate Court.
47. PK admits the allegations contained in ¶47.
48. PK admits the allegations contained in ¶48.
49. PK denies the allegations contained in ¶49 as those allegations relate to the Court issuing an Order. The Probate Court on that date conducted a Status Conference. An Order was issued in part based upon a Stipulation, in as much as PK had made it known all along that: he was holding Estate Assets, that he was paying expenses of Estate Property from Estate monies that were in his possession from the time of his Aunt Kay's demise, and that he had previously offered to turn over such Assets to Attorney French. Additionally, the Windsor County Probate Court amended its Order based upon PK's request therefor.
50. PK denies any violations of Canon 1:
 - In the absence of another's appointment, PK collected monies on behalf of Kay Tolaro for the benefit of Catherine Tolaro and/or her Estate.
 - PK's Estate Claim came about as a direct result of a suggestion from the then presiding Probate Judge. Once the mathematical error was brought to PK's attention, it was adjusted accordingly.
 - In the absence of the appointment of another and then with the knowledge and consent of the Administrator, PK paid for Estate expenses out of Estate assets.
 - PK's testimony was not untruthful.

51. PK denies any violations of Canon 2 for the reasons stated above.
52. PK denies any violations of Canon 4 for the reasons stated above.
53. PK denies any violations of Canon 5(b)(2).

DATED at Ludlow, in the County of Windsor and State of Vermont, this 26th day of July, 2016.



Melvin Fink, Esq., Attorney for Respondent,
Assistant Judge Paul T. Kane