

**State of Vermont
Judicial Conduct Board**

In Re: _____)
Assistant Judge Paul Kane _____)
_____)

JCB Docket No. 16.004

FORMAL COMPLAINT

The Vermont Judicial Conduct Board (“Board”), in accordance with Rule 7(4) of the Rules of Supreme Court for Disciplinary Control of Judges, asserts this Formal Complaint against Assistant Judge Paul Kane (“Respondent”).

Board Authority

1. The Board has jurisdiction over this matter pursuant to Board Rule 3(1) because all Judicial Code violations set forth in this Formal Complaint occurred while Respondent served as Assistant Judge in Windham County, Vermont.
2. The Board has jurisdiction over conduct which violates Canon 5 once Respondent became a candidate for judicial office.

Facts Supporting Misconduct Charge

*Events occurring prior to Katherine Tolaro's death
(October, 2009 to April, 2014)*

3. In approximately October, 2009 Katherine ("Kay") Tolaro, who is Respondent’s father’s brother’s second wife, moved into Respondent’s home in Westminster, Vermont. She was 82 at the time and showing signs of dementia.
4. On October 11, 2009, Ms. Tolaro executed a “Limited Power of Attorney For Finances” granting Respondent and his wife the ability to obtain financial information on her behalf.

5. On November 18, 2009, Ms. Tolaro executed a Will that bequeathed 30% of her assets to charities, and distributed the other 70% evenly to six beneficiaries, one of whom was Respondent.
6. On December 3, 2009 Respondent emailed Ms. Tolaro's then attorney asking how his wife might be compensated for caring for Ms. Tolaro, noting his wife's approximate hours as "7 days 4+ hours." There was no mention of Respondent providing care or wanting to be compensated in this email.
7. In January 2010, Ms. Tolaro's net worth was approximately \$767,500.
8. On February 5, 2010, Ms. Tolaro, with Respondent's assistance, issued a check to Respondent for \$60,000 with "savings" written on the memo line.
9. On April 6, 2010, Ms. Tolaro executed a new Will. In pertinent part, the Will left Ms. Tolaro's Pleasant Street residence to Respondent and his wife. It also bequeathed small amounts to four charities (Parks Place, Our Place, St. Charles Church, and Knights of Columbus). The remainder was distributed evenly to Respondent, Michael Tolaro (Ms. Tolaro's nephew), and Gloria and James Carr (two of her friends).
10. Also on April 6, 2010, Ms. Tolaro executed a new POA naming Respondent and his wife as her agents. This POA contained no gifting provision, meaning that the agents were not authorized to gift property owned by the principal, Ms. Tolaro, to anyone, including themselves.
11. On August 18, 2010, using his POA, Respondent purchased an annuity on Ms. Tolaro's behalf from Jackson Annuity Co. worth approximately \$123,228.02, naming himself and his wife as sole beneficiaries.

12. On September 27, 2010, a rental property located at Cherry Hill and owned by Ms. Tolaro was sold for \$115,000. Respondent handled this sale for Ms. Tolaro pursuant to his POA, including the distribution of funds. The net proceeds from the sale were \$107,546. \$107,000 was deposited into one of Tolaro's checking accounts. \$546 was withdrawn as cash. On that same date, however, Respondent, again using his POA, withdrew \$25,000 for himself out of one Ms. Tolaro's checking accounts.
13. On May 3, 2011, Respondent withdrew \$30,000 by cashier's check from one of Ms. Tolaro's checking accounts and signed it over to Mark Olbrych, Sr., a personal acquaintance of Respondent's.
14. On May 11, 2011, Respondent procured a \$24,000 bank check from one of Ms. Tolaro's checking accounts. In subsequent sworn testimony on November 5, 2015, Respondent asserted that this money came from a joint account. This was not true.
15. Also on May 11, 2011, Respondent executed a \$24,000 unsecured loan agreement to David Carrier, a co-worker of Respondent's, for purchase of a mobile home.
16. On July 1, 2011, Respondent withdrew a \$19,033.36 cashier's check from one of Ms. Tolaro's checking accounts and transferred it by phone to Mark Olbrych, Sr.
17. Over time Respondent sometimes deposited loan payments from Carrier and Olbrych into Ms. Tolaro's accounts, and sometimes into his own accounts.
18. Respondent continued to collect loan payments from both Carrier and Olbrych even after Ms. Tolaro died, even though Respondent's POA was extinguished and he no longer had any legal authority to tend to Ms. Tolaro's financial affairs.
19. Eventually, and also after Ms. Tolaro's death, Respondent negotiated the forgiveness of portions of both loans, without legal authority to do so.

20. On February 14, 2012, Respondent purchased a \$144,000 annuity on behalf of Ms. Tolaro from Great American Insurance Company (GAIC) naming himself and his wife as primary beneficiaries.
21. On May 3, 2012, Respondent filled out an Application for Residence for Ms. Tolaro at the Ascutney House, disclosing \$625,000 to \$650,000 in assets. Among Tolaro's assets Respondent listed monthly payments of \$925 and \$425 without explaining what they were. As explained further below, in a correspondence dated 6/16/15 from Respondent's then attorney Chris Moore to Attorney Jodi French, Respondent, through counsel, took the position that these were payments on the Carrier and Olbrych notes, and that they were Respondent's income, not Ms. Tolaro's (Moore: "They were in fact Mr. Kane's income. The \$425 was the Carrier note and the \$925 was the Olbrych note. No funds were actually due to Kay from either of these notes at any time."). This was not true.
22. In June 2012, Respondent's wife Marie passed away.
23. Upon information and belief, around this same time Respondent placed Ms. Tolaro at Ascutney House because it was too much work to care for her without his wife's assistance.
24. On April 7, 2014, Respondent submitted an Extended Care Benefit Request to Jackson Annuities seeking to liquidate the remaining balance of that annuity for purposes of paying for Ms. Tolaro's ongoing health care.
25. On April 21, 2014, Ms. Tolaro passed away.
26. Upon Ms. Tolaro's death Respondent's POA was extinguished, and thereafter he had no authority to act on behalf of Tolaro's estate.

*Events occurring between Ms. Tolaro's death and Respondent's election as assistant judge
(April 21, 2014 to November 4, 2014)*

27. On April 22, 2014, the day after Ms. Tolaro died, Jackson granted Respondent's request to trigger the extended care benefit, to close out the annuity, and to issue a \$64,169.10 check payable to Katherine Tolaro. However, that check was never cashed so the funds remained in the annuity.
28. At some point after Ms. Tolaro's death Respondent requested full distribution of the remainder of the Jackson annuity to himself as the beneficiary. This resulted in a check for the same total amount being issued to him personally rather than to Ms. Tolaro, in which case it would have flowed into her estate.
29. On May 6, 2014, GAIC wrote to Respondent expressing concern about potential conflict of interest and self-dealing given that he had purchased the annuity for Ms. Tolaro under the POA, but was also its sole remaining beneficiary since his wife had died. Prior to distribution GAIC required consent from all interested parties who might have a claim if the designation were invalid.
30. On July 3, 2014, Respondent filed a Petition to Open Decedent's Estate, indicating that Attorney Chris Moore, Respondent's own personal attorney, would serve as Executor of the Estate.
31. While Attorney Moore served as Executor of Ms. Tolaro's estate, he also continued to represent Respondent, who was a beneficiary of that estate.
32. On July 14, 2014, Attorney Moore signed Acceptance of Appointment as Administrator on Petition to Open Decedent's Estate. In that document he estimated the real estate value at \$175,000 and personal estate value at \$200,000, so a total of \$375,000 (down from \$767,500 in January 2010).

33. On September 4, 2014, Tolaro's Will was allowed by probate court, with Attorney Moore appointed as Administrator CTA.
34. On September 19, 2014, pursuant to GAIC's request, Attorney Moore sent letters to the various other beneficiaries of Tolaro's Will asking them to consent to the designation of Respondent and his wife as beneficiaries of the GAIC annuity. In those letters Moore did not disclose whether he was acting in his capacity as estate administrator, or in his capacity as attorney for one of the estate's beneficiaries, or doing both at the same time.
35. On September 24, 2014, the Knights of Columbus, one of the charitable beneficiaries of Ms. Tolaro's estate, retained Attorney Ray Massucco to look into the conflict of interest issue raised by GAIC on May 6.
36. On September 26, 2014, Massucco emailed Moore requesting a copy of the Will and the GAIC beneficiary designation.
37. On October 28, 2014, Massucco, unable to obtain a copy of the beneficiary designation from Attorney Moore, wrote GAIC directly requesting a copy of the beneficiary designation. GAIC responded stating to disclose such information it would need authorization from either Chris Moore or Respondent.

*Events occurring after Respondent was elected assistant judge
(November 4, 2014 to present)*

38. On November 4, 2014 Respondent was elected Assistant Judge in Windham County, Vermont.
39. At some point in November, 2014 Respondent forgave and wrote off a portion of Mr. Olbrych's loan.

40. On November 25, 2014, GAIC wrote to Attorney Moore stating it required consent to beneficiary designations from all interested parties before any death benefit distribution would be issued to Respondent.
41. On December 2, 2014, Attorney Moore emailed Lynda Walker (an annuity broker) asking for help obtaining a \$144,000 death benefit despite not being able to get the consent to beneficiary forms requested by GAIC.
42. On January 28, 2015, Attorney Massucco wrote to Attorney Moore raising Moore's conflict of interest complaining of his evasiveness in refusing to produce copies of the GAIC annuity documents.
43. On February 9, 2015, Attorney Moore filed an inventory for the Tolaro estate disclosing a total estate value of \$200,000, all of which was real estate, down from \$767,500 five years before.
44. On March 4, 2015, Jodi French was appointed successor administrator to the estate.
45. On March 5, 2015, the day after Respondent was sworn into office as assistant judge, Respondent negotiated a partial write-off of the Carrier loan pursuant to which he personally collected \$10,000.
46. On July 31, 2015, Respondent filed a Written Statement of Claim against the Tolaro estate, claiming \$833,292.51 was owed to him. This claim included \$722,740 for caring for Ms. Tolaro, calculated at \$18 per hour, 159 hours per week (a week contains a total of 168 hours) for both Respondent and his wife, for 135 weeks. This amounted to around the clock payment except when home care nurse was there for 2-3 hours three times per week. The Claim also included \$20,925 for 31 months of room and board calculated at \$675 per month, \$7,800 due to the Respondent and his wife for financial and property

management (calculated at 5 hours per week, \$15 per hour, for 104 weeks), and finally \$31,827.51 for “expenses advanced to the estate by Paul Kane from April 21, 2012 to July 31, 2015.

47. On August 26, 2015, Attorney French filed a Notice of Disallowance of Claim and Motion for Subpoena and Hearing.
48. On November 5, 2015, Respondent testified under oath at a hearing on Attorney Massucco’s Motion to Allow Discovery in connection with the probate case for Ms. Tolaro’s estate.
49. On May 24, 2016, the Windsor County Probate Court issued an Order directing Respondent to, among other things: (a) turn over to the Tolaro estate \$55,188.12 in estate assets from various bank accounts (reserving the estate’s right to challenge that figure as deficient); (b) produce his tax returns from 2010 to 2014; (c) sit for deposition within 90 days (along with two individuals to whom Respondent made loans with Tolaro’s assets); and (d) turn over possession of Tolaro’s personal residence located on Pleasant Street in Bellows Falls.

Canons Violated

50. **Canon 1** states in relevant part that “[a] judge should participate in establishing, maintaining and enforcing high standards of conduct and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved.” *Id.* Respondent failed to personally observe the aforementioned standards while serving as assistant judge, and therefore violated Canon 1, for the following reasons, among others:

- Respondent continued to collect and deposit into his personal account certain payments on loans he claims to have originally made for the benefit of Tolaro’s

estate, but which appear to have benefitted him personally. Respondent had no legal authority to manage those loans after Ms. Tolaro's death. Rather, they should have been managed by the estate administrator. In addition, Respondent did not have authority to negotiate any forgiveness or write off of any portion of those loans, which he did in both cases.

- On July 31, 2015 Respondent filed a manifestly implausible claim against Ms. Tolaro's estate for \$833,292.51. Among other things, Respondent's wage calculation left only 4 hours per week for Respondent to work, sleep or do anything other than care for Ms. Tolaro. Given that he was employed at the time, that is not possible. Asserting such a manifestly unsupportable claim does not comport with high standards of integrity and candor expected of judges by the Judicial Code.
- Respondent continued to use Ms. Tolaro's funds, over which he continued to have control, to pay the expenses for and manage Ms. Tolaro's Pleasant Street property, which he stood to inherit, until the probate court's May 24 order. Respondent had no legal authority to be managing the property until it was legally transferred to him, nor did he have any authority to hold onto estate funds to pay those management costs. Those decisions should have been made by the estate administrator since the date of Ms. Tolaro's death.
- Respondent did not provide entirely truthful testimony at a November 5, 2015 hearing in connection with Ms. Tolaro's probate proceeding. Specifically, he testified that at least one of the loans he made to a personal friend came from a joint account owned by him and Ms. Tolaro. Apart from the fact that maintaining

such an account would likely have constituted unlawful comingling under Vermont's POA statute, the account at issue was at all times in Tolaro's name only.

51. **Canon 2** states in relevant part that: “[A] judge should respect and comply with the law and shall act all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” *Id.* Respondent neither “respected” nor “complied with” the law but rather violated it repeatedly, thus violating Canon 2, for the following reasons, among others:

- Respondent continued to collect and deposit into his personal account certain payments on loans he claims to have originally made for the benefit of Tolaro's estate, but which appear to have benefitted him personally. Respondent had no legal authority to manage those loans after Ms. Tolaro's death. Rather, they should have been managed by the estate administrator. In addition, Respondent did not have authority to negotiate any forgiveness or write off of any portion of those loans, which he did in both cases.
- On July 31, 2015 Respondent filed a manifestly implausible claim against Ms. Tolaro's estate for \$833,292.51. Among other things, Respondent's wage calculation left only 4 hours per week for Respondent to work, sleep or do anything other than care for Ms. Tolaro. Given that he was employed at the time, that is not possible. Asserting such a manifestly unsupportable claim does not comport with high standards of integrity and candor expected of judges by the Judicial Code.

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- Respondent did not provide entirely truthful testimony at a November 5, 2015 hearing in connection with Ms. Tolaro’s probate proceeding. Specifically, he testified that at least one of the loans he made to a personal friend came from a joint account owned by him and Ms. Tolaro. Apart from the fact that maintaining such an account would likely have constituted unlawful comingling under Vermont's POA statute, the account at issue was at all times in Tolaro’s name only.

This conduct also likely eroded public confidence in the integrity and impartiality of the judiciary.

52. **Canon 4** provides that “A judge shall conduct all of the judge’s extra-judicial activities so that they do not demean the judicial office.” *Id.* at subsection (A)(2). Respondent undermined the dignity and respectability of, and thus demeaned, the judiciary, thereby violating Canon 4, for the following reasons, among others:

- Respondent continued to collect and deposit into his personal account certain payments on loans he claims to have originally made for the benefit of Tolaro’s estate, but which appear to have benefitted him personally. Respondent had no

legal authority to manage those loans after Ms. Tolaro's death. Rather, they should have been managed by the estate administrator. In addition, Respondent did not have authority to negotiate any forgiveness or write off of any portion of those loans, which he did in both cases.


- On July 31, 2015 Respondent filed a manifestly implausible claim against Ms. Tolaro's estate for \$833,292.51. Among other things, Respondent's wage calculation left only 4 hours per week for Respondent to work, sleep or do anything other than care for Ms. Tolaro. Given that he was employed at the time, that is not possible. Asserting such a manifestly unsupportable claim does not comport with high standards of integrity and candor expected of judges by the Judicial Code.
- Respondent continued to use Ms. Tolaro's funds, over which he continued to have control, to pay the expenses for and manage Ms. Tolaro's Pleasant Street property, which he stood to inherit, until the probate court's May 24 order. Respondent had no legal authority to be managing the property until it was legally transferred to him, nor did he have any authority to hold onto estate funds to pay those management costs. Those decisions should have been made by the estate administrator since the date of Ms. Tolaro's death.
- Respondent did not provide entirely truthful testimony at a November 5, 2015 hearing in connection with Ms. Tolaro's probate proceeding. Specifically, he testified that at least one of the loans he made to a personal friend came from a joint account owned by him and Ms. Tolaro. Apart from the fact that maintaining such an account would likely have constituted unlawful comingling under

Vermont's POA statute, the account at issue was at all times in Tolaro's name only.

53. **Canon 5(b)(2)** provides, in relevant part, that “a candidate for initial appointment to state judicial office shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary” *Id.* To the extent the conduct set forth above occurred between the time that Respondent became a candidate for judicial office and the time he was elected – including but not limited to his management and collection of payments on the Carrier and Olbrych loans and his ongoing management of the Pleasant Street property – Respondent failed to maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity of the judiciary during that time.

Respondent has a right to file a written answer within twenty-one days of service, to be represented by counsel, to cross examine witnesses, and to produce evidence on his own behalf. Pursuant to Rule 9(1), failure to answer or to deny misconduct or disability shall be deemed an admission of the charges.

DATED AT Burlington, Vermont this 27th day of June, 2016.



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