

STATE OF VERMONT
JUDICIAL CONDUCT BOARD

JCB Docket No.: 16.004

In Re:)
Assistant Judge Paul T. Kane) MOTION FOR RECUSAL
)
)

NOW COMES Respondent, Paul Kane, in the above matter by his attorney, Melvin Fink, and moves for the Recusal of any members of the Judicial Conduct Board who participated in the preparation of the proposed "Public Reprimand" transmitted to the undersigned under date of March 9, 2017 and, as a basis therefor, says as follows:

1. The parties submitted a proposal for settlement of the above Complaint on or about March 6, 2017.
2. The proposed settlement included a "Stipulation of Facts."
3. Thereafter, the Chairman of the Judicial Conduct Board, Steven Adler, forwarded a revised "Public Reprimand" to the Respondent for consideration. This Reprimand was more extensive than that previously submitted by the parties.
4. The revised Public Reprimand was not agreeable to the Respondent.
5. The revised Public Reprimand refers to "facts" that are not contained in the agreed Stipulation of Facts submitted by the parties, to wit, (illustratively):

"Finally after having depleted his late friend's Estate of most of its assets..."

[revised Public Reprimand - second paragraph - line 5]

6. The Respondent had not previously agreed to having depleted the Catherine Tolaro Estate of most of its assets, nor did the agreed Stipulation reasonably conclude so.
7. Conversely, the Respondent maintains that the value of Catherine ("Kay") Tolaro's Estate, at the time of her death, was approximately \$480,000 (four-hundred eighty-thousand dollars).

8. Accounts had been published in various newspapers wherein the Respondent has been falsely reported to have "depleted the Estate assets to zero, not including the value of the home." (See article, among others, published in the Brattleboro Reformer, March 1, 2017, page A1, at column 6:

"Prior to Kane's involvement, her assets totaled nearly \$800,000. Between 2010 and 2014, wrote Bellows Falls attorney L. Raymond Massucco in a filing before the Windham Probate Court, the estate was eventually depleted to a balance of zero, not including the value of the home. Massucco is representing Michael Tolaro and the Knights of Columbus, both beneficiaries of the will. The case was moved from the Windham court to Windsor to avoid any appearances of conflict."

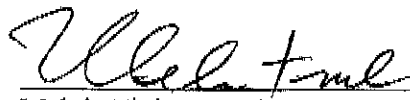
"Massucco maintained that Kane used his 'power of attorney and influence (over Tolaro) to transfer the vast majority of her assets to himself and his late wife.'"

[Id.]

9. It appears that "facts" and reports that were not a part of Respondent's agreed Stipulation have crept into the case and been utilized as a basis for the Board's proposed Public Reprimand.
10. Such consideration deprives the Respondent of a fair and impartial hearing.
11. Rule 10 of the Rules of Supreme Court for Disciplinary Control of Judges provides in part that:
- (1)The hearing panel shall rely only on the record in reaching its final order.
12. It is apparent that those members of the Judicial Conduct Board who formulated the Public Reprimand were mindful of published reports that were not before the Board by Stipulation and improperly utilized such reports in formulating a Public Reprimand. The Respondent's right to a fair and impartial hearing should not be tarnished with such considerations.

WHEREFORE, Respondent requests that the Judicial Conduct Board identify those members privy to the formulation of the Public Remand developed by the Board and cause recusal of such members from further proceedings in the above-captioned matter.

DATED at Ludlow, in the County of Windsor and State of Vermont, this 13th day of March, 2017.


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