

STATE OF VERMONT  
JUDICIAL CONDUCT BOARD

\_\_\_\_\_  
In Re: \_\_\_\_\_ )  
Judge Paul Kane \_\_\_\_\_ )  
\_\_\_\_\_ )

JCB Docket No. 16.004

MOTION FOR TELEPHONIC STATUS CONFERENCE

Board Counsel, the undersigned, respectfully moves for a telephonic status conference to address three issues relating to depositions in the above captioned matter.

**1. Counsel for Respondent's Improper Request To Depose Board Counsel.**

On September 16, 2016, counsel for Respondent, Attorney Melvin Fink, asserted that he wishes to depose Board Counsel. *See* Exhibit A. On September 19, 2016 Board Counsel responded explaining such a deposition was improper, adding that if Attorney Fink disagreed we could schedule a telephonic status conference with the Board to clarify that point. *See* Exhibit B. Rather than responding to the suggestion of a conference, on October 4, 2016 Attorney Fink simply replied: "I disagree with your analysis of September 19, 2016 concerning your Deposition. Accordingly, I enclose herewith a Notice of Deposition." *See* Exhibit C.

Board Counsel cannot be deposed in this matter because the Board Rules expressly prohibit it. *See* Board Rule 9(4) ("no depositions may be taken of Board members or counsel to the Board"). Although no further explanation is necessary, it is also worth noting that Board Counsel has no first hand knowledge of any information relating to the case. As a result, such a deposition would necessarily invade privilege, and likely focus on confidential information relating to the pre-complaint investigative phase of this matter.

Board Counsel asks that a telephone status conference be scheduled to clarify this point. In the alternative, a short Entry Order could also be issued to that effect.

**2. The Undersigned Requests That The Board Chair Be Reachable By Telephone At The Time Of Mr. Kane's Deposition.**

Mr. Kane's deposition is scheduled to take place at 10 a.m. on December 7, 2016 at the Brattleboro offices of Downs Rachlin & Martin, PLLC. For reasons that cannot be disclosed here due to the confidentiality of preliminary investigations conducted by Board Counsel, *see, e.g.*, Board Rule 6(7), the undersigned is concerned that issues may arise during Mr. Kane's deposition that require judicial (*i.e.* Board) intervention. Board Counsel therefore believes it would be beneficial if the Board Chair, or perhaps another designated Board member also possessing experience with the Rules of Civil Procedure and typical deposition protocol, were available at the time of Mr. Kane's deposition for possible telephone calls in the event of an unresolvable conflict.

**3. Mr. Kane Should Be Instructed That He Must Appear For His Own Noticed Deposition.**

Finally, because of the apparent gamesmanship afoot in the scheduling of depositions, the undersigned respectfully asks the Board Chair to clarify that Mr. Kane does in fact need to show up for his own properly noticed deposition.<sup>1</sup> Board Counsel recognizes that requesting clarification that a party needs to show up for his own deposition is rather unusual, however this has already proven to be an unusual case, characterized in particular by challenging communications between counsel. The undersigned does not want to run the risk of driving two hours to Brattleboro on December 10 only to find that counsel for Respondent declined to present his client as required.

Respectfully submitted.

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<sup>1</sup> *See, e.g.*, 8A Fed. Prac. & Proc. Civ. § 2107 n.1 (3d ed. 2016) ("Notice for taking of deposition sent to all parties to an action is all that is necessary to require attendance of parties at their depositions; subpoena is not necessary.") (citing *Pinkham v. Paul*, 91 F.R.D. 613, 614 (D. Me. 1981)); 23 Am.Jur.2d Depositions and Discovery § 93 ("[I]f the person to be examined is a party to the action, a subpoena is not required, a notice to take the deposition being sufficient to require the attendance of a party.") (citations omitted).

Dated at Burlington, Vermont this 7th day of October, 2016.



Ian P. Carleton  
SHEEHEY FURLONG & BEHM P.C.  
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Burlington, VT 05402-0066  
Telephone: (802) 864-9891  
[icarleton@sheeheyvt.com](mailto:icarleton@sheeheyvt.com)

Special Counsel to the Vermont Board of  
Judicial Conduct

# EXHIBIT A

**MELVIN FINK, P.C.**

ATTORNEY AT LAW

Post Office Box 217

104 Main Street

Ludlow, Vermont 05149

Telephone (802) 228-4111

Facsimile (802) 228-3749

September 16, 2016

Ian P. Carleton, Esq.  
Sheehey, Furlong & Behm, PC  
30 Main St.-Gateway Sq.-6<sup>th</sup> Fl --- PO BOX 66  
Burlington, VT 05402-0066

**By Fax: 802-864-6815**

**In Re: Asst. Judge Paul Kane**  
**JCB Docket No.: 16.004**

Dear Mr. Carleton:

I have available December 7<sup>th</sup>, 13<sup>th</sup> or 14<sup>th</sup> for your proposed Deposition of Judge Kane. I propose to conduct your Deposition on either one of the two remaining days.

Very truly yours,



MF/hm

Melvin Fink

cc: Paul Kane

# EXHIBIT B

SHEEHEY FURLONG & BEHM  
PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

DAVID T. AUSTIN  
R. JEFFREY BEHM  
DEBRA L. BOUFFARD  
JUSTIN A. BROWN\*  
IAN P. CARLETON  
ARLINE P. DUFFY  
MICHAEL G. FURLONG  
KEVIN A. LUMPKIN  
DIANE M. MCCARTHY  
OWEN J. McCLAIN  
MARK E. MELENDY  
RENEE L. MOBBS  
DAPHNE MORITZ  
CRAIG S. NOLAN  
LEIGH K. PHILLIPS  
PETER G. RAYMOND  
JAMES W. SPINK  
PETER H. ZAMORE

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FACSIMILE (802) 457-9158

[WWW.SHEEHEYVT.COM](http://WWW.SHEEHEYVT.COM)

PAUL D. SHEEHEY (1919-2004)

\*ADMITTED IN MA ONLY

September 19, 2016

Melvin Fink, Esq.  
Melvin Fink, P.C.  
104 Main Street  
P.O. Box 217  
Ludlow, VT 05149

Re: Paul Kane Investigation

Dear Attorney Fink,

Enclosed please find a Notice of Deposition indicating that Mr. Kane's deposition will take place starting at 10:00 a.m. on Wednesday, December 7, 2016 at the Brattleboro offices of Downs Rachlin Martin, PLLC. Your proposal to take my deposition is procedurally improper. I am the prosecuting attorney in this matter. I am not a witness. If you disagree I suggest we find a time this week to request a telephonic status conference with Chairman Adler to clarify that point.

Best Regards,

SHEEHEY FURLONG & BEHM P.C.



Ian P. Carleton

IPC/srr  
Enclosure

STATE OF VERMONT  
JUDICIAL CONDUCT BOARD

In Re:  
Judge Paul Kane

JCB Docket No. 16.004


NOTICE OF DEPOSITION

TO: Melvin Fink, Esq.  
Melvin Fink, P.C.  
104 Main Street  
P.O. Box 217  
Ludlow, VT 05149

Notice is hereby given by Ian Carleton, Esq., of Sheehey Furlong & Behm, that the deposition of **Paul Kane** will be taken at the office of the Downs Rachlin Martin, PLLC, 28 Vernon Street, Suite 501, Brattleboro, VT 05301 on the 7<sup>th</sup> day of **December, 2016**, beginning at **10:00 a.m.**, unless an alternate time and location is established. The deposition will be taken before a person authorized to administer oaths. The deposition will be recorded stenographically, and by videotape. The deposition will continue from day to day, Saturdays, Sundays and holidays excepted, until completed. You are hereby invited to attend and examine the deponent.

Dated at Burlington, Vermont this 19<sup>th</sup> day of September, 2016.

SHEEHEY FURLONG & BEHM P.C.

By:   
Ian Carleton, Esq.  
30 Main Street  
P.O. Box 66  
Burlington, VT 05402  
[icarleton@sheeheyvt.com](mailto:icarleton@sheeheyvt.com)  
(802) 864-9891



# EXHIBIT C

**MELVIN FINK, P.C.**  
ATTORNEY AT LAW  
Post Office Box 217  
104 Main Street  
Ludlow, Vermont 05149

Telephone (802) 228-4111  
Facsimile (802) 228-3749

October 4, 2016

Ian P. Carleton, Esq.  
Sheehey, Furlong & Behm, PC  
30 Main St.-Gateway Sq.-6<sup>th</sup> Fl --- PO BOX 66  
Burlington, VT 05402-0066

**By Fax: 802-864-6815**

**In Re: Asst. Judge Paul Kane**  
**JCB Docket No.: 16.004**

Dear Mr. Carleton:

I disagree with your analysis of September 19, 2016 concerning your Deposition.  
Accordingly, I enclose herewith a Notice of Deposition.

Very truly yours,



Melvin Fink

MF/hm  
Enc

cc: Paul Kane


**STATE OF VERMONT  
JUDICIAL CONDUCT BOARD**

**JCB Docket No.: 16.004**

**In Re:** )  
 )  
**Assistant Judge Paul Kane** ) **NOTICE OF DEPOSITION**  
 )

Notice is hereby given that the Deposition upon oral examination of **IAN P. CARLETON, Esq.**, 30 Main Street – PO Box 66, Burlington, VT 05402, will be held at the law offices of Melvin Fink, P.C., located at 104 Main Street, Ludlow, VT on **Tuesday, December 13, 2016**, beginning at **10:00 a.m.**, before a Notary Public or before some other officer authorized by law to administer oaths. The Deposition will be recorded stenographically. The oral examination will continue from day to day until completed.

DATED at Ludlow, in the County of Windsor and State of Vermont, this 4<sup>th</sup> day of October, 2016.

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