

# JUDICIAL CONDUCT BOARD

TELEPHONE (802) 748-8161  
FACSIMILE (802) 748-4001



1194 MAIN STREET, SUITE 104  
P.O. BOX 189  
ST. JOHNSBURY VT 05819-0189

Steven A. Adler, Esq.  
Chair

## STATE OF VERMONT BEFORE THE JUDICIAL CONDUCT BOARD

**IN RE:**

**Judge Paul Kane**

**Docket No. 16.004**

### ORDER on MOTION eFILED 10/7/2016

In the above matter, the Judicial Conduct Board has received by e-filing this date a Motion for a Telephonic Status Conference. The Motion filed by Special Counsel Ian P. Carleton raises three issues:

1. Whether Respondent's Notice of Deposition directed to trial counsel dated October 4, 2016 is proper.
2. Whether the Board Chair or his designee may be available on December 7<sup>th</sup> in the event any mid-deposition issue arises during the deposition of Respondent.
3. Whether a separate Order from the Board is required to secure Mr. Kane's attendance at his own deposition.

The Board sought to determine whether the parties could make themselves available for a teleconference to be held at 3:00 p.m. on October 7, 2016; Special Counsel confirmed his availability but Respondent's counsel advised that he was not available and suggested an alternative date.

In light of the unavailability of counsel, the substance of the Motion by Special Counsel along with its attachments, and the clarity of the applicable Rules for the

Disciplinary Control of Judges, Special Counsel's Motion for a Telephonic Status

Conference is DENIED and the issues presented are decided without hearing.

1. Respondent's Notice of Deposition of Special Counsel Ian P. Carleton dated October 4, 2016 is hereby QUASHED. Vermont's Rules for Disciplinary Control of Judges § 9(c) expressly prohibits the taking of deposition of any Board Member or counsel to the Board. The Supreme Court has not included any exception within the Rule. Moreover, based upon the attachments to the Motion, Respondent's Attorney has been aware of an objection to the taking of Special Counsel's deposition since at least his receipt of a letter dated September 19, 2016 and has not sought special permission from this Board. Instead, it appears that Respondent's counsel has simply noticed a deposition. Even were Rule 9 unclear, which it is not, Attorney Fink has proffered no reason pursuant to V.R.C.P. 26(b)(3) for any substantial need for Counsel's trial preparation materials or made any offer that the Board's Counsel has personal knowledge of the matters at issue in this case.

2. Special Counsel further requests that the Board Chair or his designee be available during the deposition of Respondent Paul Kane. Although it is hoped that Judicial intervention will be unnecessary, the Board Chair or his designee will be available should that be required. Counsel are reminded of their obligations under V.R.C.P. 30, both as to the manner of taking depositions and to the nature and procedure for interposing objections.

3. Finally, Special Counsel asked for a prospective Order that Mr. Kane appear at his own deposition. This request is premature. Should a party fail to appear at a properly noticed deposition, they do so at their peril, since sanctions may be imposed in accordance with V.R.C.P. 30. The video deposition of Paul Kane has been noticed for December 7, 2016. No objection to that deposition has been filed with this Board and there is no suggestion made that the deponent had previously existing commitments on that date. This Board expects that the parties will work cooperatively and professionally so the deposition is timely accomplished.

**IT IS SO ORDERED.**

Dated at St. Johnsbury, Vermont this 7<sup>th</sup> day of October, 2016.

VERMONT JUDICIAL CONDUCT BOARD

By: \_\_\_\_\_



Steven A. Adler, Chair

c: Special Counsel Ian P. Carleton, Esq. - via email  
Respondent's Counsel Mel Fink, Esq. - via email