

JUDICIAL CONDUCT BOARD

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Steven A. Adler, Esq.
Chair

STATE OF VERMONT BEFORE THE JUDICIAL CONDUCT BOARD

IN RE:
Judge Paul Kane

Docket No. 16.004

ORDER ON PENDING ISSUES AS A RESULT OF TELEPHONIC CONFERENCE HELD ON FEBRUARY 14, 2017

On February 10, 2017 Special Counsel Ian P. Carleton filed a Motion for Order Compelling Testimony and Document Production from Attorney Christopher Moore, Esq. By email of February 10, 2017, counsel for Respondent Melvin D. Fink requested that the matter be set for telephonic hearing, which was agreed to by Special Counsel and occurred on February 14, 2017. As a result of the hearing, two issues remained for Decision. Respondent's counsel was invited to file a written response on or before February 22, 2017; no response was received. Based on the pleadings filed and the arguments of counsel at the hearing, it is HEREBY ORDERED AS FOLLOWS:

1. Special Counsel has identified an out of State witness, David Carrier, and made a proffer with regard to the nature of his testimony. Having no objection from Respondent, it is HEREBY ORDERED THAT David Carrier may testify at the hearing telephonically after being sworn in over the telephone.
2. Attorney Christopher Moore, Esq. is alleged to have represented Respondent Paul Kane at times material to the pending Complaint. Judge Kane has asserted that certain of his actions were based upon the advise of Attorney Moore as counsel. Judge Kane's claimed defense appears to relate specifically to matters at issue here, including without limitation the purchase and distribution of various annuities and other financial matters relating to Catherine Tolaro or her estate. By raising this defense, Judge Kane has waived any claim to attorney/client privilege with respect to Attorney Moore. Attorney Moore, through counsel Christopher D. Ekman, Esq., has expressed concern that a deposition will required disclosure of privileged materials, protected by V.R.C.P. 45(c)(3)(A)(iii).
3. Accordingly, it is HEREBY ORDERED THAT Attorney Moore shall appear at a deposition to be scheduled forthwith, shall produce upon request any and all documents identified on Exhibit A to Special Counsel's Subpoena, and shall give

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testimony reasonably related to deposition inquiry allowed by the Vermont Rules of Civil Procedure. Attorney Moore shall testify without limitation of any claim of attorney-client privilege, which for the purpose of this deposition, is waived. Such testimony shall be given subject to non suggestive objections pursuant to V.R.C.P. 30(d).

4. Special Counsel has suggested an order of witnesses in the presentation of his case which could result in a conclusion of the first day of trial, March 20, 2017, by mid afternoon. The parties are advised that the trial is scheduled to commence at 9:00 am on March 20 and continue, subject to normal breaks, until 4:30 pm on each trial date. The parties are to organize their witnesses accordingly.
5. The parties are reminded that pretrial memoranda, witness lists, stipulated facts (if any) and to the greatest extent possible all premarked exhibits are to be delivered to the undersigned office on or before March 13, 2017. Exhibits should be sent electronically and with 2 paper copies of exhibits.

IT IS SO ORDERED.

Dated at St. Johnsbury, Vermont this 23 day of February, 2017.

VERMONT JUDICIAL CONDUCT BOARD

By: 
Steven A. Adler, Chair

c: Ian P. Carleton, Esq.
Melvin D. Fink, Esq.
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