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A. C. J. C.

IN THE MATTER OF SURROGATE DONALD W. DE LEO	SUPREME COURT OF NEW JERSEY ADVISORY COMMITTEE ON JUDICIAL CONDUCT DOCKET NO.: ACJC 2006-026 **ANSWER AND AFFIRMATIVE DEFENSES**

Respondent, Donald W. De Leo, Surrogate of Hudson County by way of Answer to the Complaint filed against him by the Advisory Committee on Judicial Conduct ("Complainant") says:

1. The Respondent admits the allegations contained in the first paragraph of the Complainant's Complaint.

2. The Respondent admits the allegations contained in the second paragraph of the Complainant's Complaint.

COUNT I

3. The Respondent admits the allegations contained in Paragraph #3 of the Complainant's Complaint.

4. The Respondent admits the allegations contained in Paragraph #4 of the Complainant's Complaint.

5. The Respondent admits that at the time the Will was drafted, the decedent and Ms. Savage were residents at 9060 Palisade Avenue, North Bergen, New Jersey,

which is a cooperative apartment building consisting of approximately 200 residential Units, in which the Respondent also resided.

6. The Respondent denies the allegations contained in Paragraph #6 of the Complainant's Complaint.

COUNT II

7. Respondent repeats and incorporates each number answer to the within Complaint as though the same has been pleaded verbatim herein.

8. The Respondent admits that in his ministerial capacity as Surrogate of Hudson County after the executrix of the Estate of Abraham Kohl, processed all of the required documentation with Ms. Linda Baisden, a probate clerk in the Hudson County Surrogate's Office who was handling this case, the paperwork was submitted to the Respondent along with other requests for Letters Testamentary from other applicants to be signed by the Respondent as County Surrogate. The Respondent in his capacity as Surrogate performed the ministerial task of signing the Letters Testamentary as required by Statute. The Respondent exercised no discretion or independent judgment in this action. For the Respondent to act otherwise would have been a violation of his oath of office.

9. The Respondent admits that on November 26, 2003 acting in his capacity as Surrogate of Hudson County, he performed the ministerial task of admitting the Will to probate after it was processed by Ms. Linda Baisden, a probate Clerk in the office, all of the Statutory requirements were met and reviewed by Ms. Baisden. For the Respondent to fail to act in his capacity as Surrogate would have been a violation of his oath of office and a disservice to the public.

10. The Respondent denies the allegations contained in Paragraph #10 of the Complainant's Complaint. The Respondent did not participate in probate practice. When the Respondent prepared the documents requested by Abraham Kohl, Mr. Kohl was alive. The drafting of a Will is not a probate or an Estate activity. The Respondent did not violate Canon 3C(1) inasmuch as there was no impartiality which might reasonably have been questioned and that the proponent of the Will, for after it was reviewed by staff and recommended to probate by staff, satisfied all of the Statutory requirements. Admitting the Will to probate does not violate the Code of Judicial Conduct 5A(1), in that the Respondent was not placed in a situation in which he had to act impartially, and the Respondent denies that he violated Rule 2:15-8(a)(6) in that his conduct was not prejudicial to the administration of justice and did not bring his judicial office as County Surrogate into disrepute.

WHEREFORE, the Respondent demands, that the charges against him be dismissed and the judgment be entered on behalf of the Respondent.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complainant's Complaint should be dismissed based on the fact that the Complaint fails to state the cause of action upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The actions of the Respondent in the drafting of documents for the decedent was not in conflict with his office as County Surrogate inasmuch as the decedent at the time that the Respondent drafted the documents was alive. An Estate is only established and the probating of a Will only occurs once, a testator is deceased. At no time did the

Respondent participate in the affairs of the decedent's Estate. In the eyes of the Internal Revenue Service and to the State of New Jersey, Division of Taxation, an Estate is a legal entity, which usually applies for its own Tax Identification number and files its own Tax Returns. The Respondent had no professional relationship with this entity other than admitting the Will to probate.

THIRD AFFIRMATIVE DEFENSE

The Respondent's actions in the probating in the Estate of Abraham Kohl were merely ministerial inasmuch as all of the preliminary questions which were required in order to satisfy the probate laws in the State of New Jersey were handled by a professional probate Clerk of the Hudson County Surrogates office who processed the entire file and submitted the file with all completed forms to the Surrogate, for the Surrogate to ministerally affix his name to the required documents. The Respondent exercised no independent judgment and was not in the position to violate a requirement of impartiality.

Respectfully submitted
POJANOWSKI & TRAWINSKI, P.C
Attorneys for Respondent,

DATE: 1/15/07

By: _____
Joseph A. Pojanowski, III, Esq.