

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF GABRIEL G. § No. 69, 2007
ATAMIAN FOR A WRIT OF §
MANDAMUS AND/OR §
PROHIBITION §

Submitted: March 8, 2007
Decided: March 15, 2007

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

ORDER

This 15th day of March 2007, it appears to the Court that:

(1) Gabriel Atamian filed this petition seeking a writ of mandamus and/or prohibition directed to the Superior Court. Atamian appears to request this Court to compel the Superior Court to vacate an order entered on July 20, 2006, in the case of *Atamian v. Ryan*, Del. Super., C.A. No. 03C-12-038. Atamian also requests that two Superior Court judges be directed to recuse themselves from further proceedings in his case.

(2) In a previous writ proceeding filed by Atamian, this Court had directed the Superior Court to vacate its July 20, 2006, order, which incorrectly denied Atamian's motion for reargument as untimely, and ordered the trial court to consider the merits of Atamian's motion.¹ The docket reflects that the Superior Court vacated the July 20, 2006, order on

¹ *In re Atamian*, Del. Supr., No. 391, 2006, Steele, C.J. (Sept. 25, 2006).

February 15, 2007. Accordingly, to the extent Atamian requests a writ to compel that order be vacated, his petition is moot.

(3) Furthermore, the Superior Court docket reflects that the judge who issued the July 20, 2006, order has recused himself from further proceedings in Atamian's case. Atamian's request to recuse the judge, therefore, is moot. Atamian's request to recuse a second Superior Court judge does not form the basis for an extraordinary writ. In the first instance, Atamian has offered no factual basis for the judge's recusal. Moreover, the decision not to recuse oneself is a matter that can be reviewed on appeal.² An extraordinary writ will not issue to compel the performance of a discretionary act or when there is an adequate remedy at law, *i.e.*, an appeal.³

NOW, THEREFORE, IT IS ORDERED that Atamian's petition for a writ of mandamus and/or prohibition is DISMISSED.

BY THE COURT:

/s/ Randy J. Holland
Justice

² *Capano v. State*, 781 A.2d 556, 641 (Del. 2001).

³ *Darby v. New Castle Gunning Bedford Ed. Ass'n*, 336 A.2d 209, 210 (Del. 1975).