

# JUDICIAL CONDUCT BOARD



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February 15, 2022

## CLOSURE REPORT OF THE VERMONT JUDICIAL CONDUCT BOARD

Re: Docket No.: 20.025

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This Docket is the result of a complaint alleging that an assistant judge (“Judge”) owned a business (“Business”) that had an agreement with a governmental entity (“Entity”) to provide certain services. The Complainant stated that because the Judge has oversight of the Entity’s budget, the agreement between the Business and Entity gave rise to violations of the Code of Judicial Conduct.

The Judicial Conduct Board conducted an initial inquiry, then assigned Special Counsel to conduct an Investigation under Rule 7(2) of the Rules for Disciplinary Control of Judges.

Special Counsel conducted an exhaustive investigation including review of the Entity’s budget procedures, the Entity’s historical use of the Business both before and after the Business was owned by the Judge, invoices and account statements between the Business and the Entity, interviews with Complainant and the Judge, documents produced by each, and the relevant statutory provisions.

Special Counsel analyzed all potentially applicable portions of the Code of Judicial Conduct and divided them into two categories: actual impropriety and the appearance of impropriety.

### **Actual impropriety: Rules 1.3, 2.4(B), and 3.11(B)(1)**

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| Rule 1.3        | “A judge shall not abuse the prestige of judicial office to advance personal or economic interests of the judge or others or allow others to do so.”   |
| Rule 2.4(B)     | “A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge’s judicial conduct or judgment.”  |
| Rule 3.11(B)(1) | “A judge shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that a judge may manage or participate in[]a business closely held by the judge or members of the judge’s family. |

Special Counsel determined there was no actual impropriety under the above Rules. Special Counsel reasoned that the Rules expressly allow the Judge (with their immediate family) to own the Business. Further, Special Counsel found that there was no evidence indicating that the Judge tampered with or did anything improper related to the Entity's budget or the budget process generally. Special Counsel also found no evidence of differential treatment toward the Entity, but rather that the Business offered the same terms as in the agreement with the Entity to entities at large, making no distinction between governmental and non-governmental entities. In addition, Special Counsel found that the funds used by the Entity to pay for the Business's services are not monies the Judge had the ability to control or direct under the Judge's budget-related authority. Finally, the Entity had been getting services at the Business long before the Judge purchased the Business.

**Appearance of impropriety: Rules 1.2 and 3.12**

Rule 1.2            "A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety."

Rule 3.12           "A judge may accept reasonable compensation or income for extrajudicial activities permitted by this Code or other law unless such acceptance would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality."

Special Counsel analyzed the facts of the Complaint and the results of his Investigation, noting that the comment to the analogous canon of the federal judicial code defines the term "appearance of impropriety" as follows:

*An appearance of impropriety occurs when reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge's honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired.*

Code of Judicial Conduct for United States Judges, Canon 2A, Commentary (emphasis added).

Special Counsel also reviewed and summarized the applicable legal precedent, applying it to the facts of this case and determining that the Judge's interest in the Business is only indirectly connected with the budgetary duties related to the Entity. The line items in the budget do not include any funding that can be used to purchase services from the Business; therefore, Special Counsel reasoned that the Judge did not have the ability to approve funding that the Entity would then spend at the Business.

Special Counsel determined there was no actual impropriety, and, based on all the relevant circumstances disclosed by the Investigation, no appearance of impropriety, and therefore that the Judge did not violate the Vermont Code of Judicial Conduct.

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**Conclusion**

The Board reviewed Special Counsel's investigation report, the complaint, and the Judges response. To the extent the Complaint alleges ethical impropriety or a violation of the Code of Judicial Conduct, the Board has determined that the Complaint is unfounded and there is no cause for further proceedings. *Rules of the Supreme Court for the Disciplinary Control of Judges*, Rule 11.

Accordingly, the Complaint in Docket No. 20.025 is DISMISSED.

JUDICIAL CONDUCT BOARD

By:   
Michael N. Donofrio, Vice Chair