

# JUDICIAL CONDUCT BOARD



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BARBARA R. BLACKMAN, ESQ.  
CHAIR

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September 29, 2021

## CLOSURE REPORT OF THE VERMONT JUDICIAL CONDUCT BOARD

Re: Docket No.: 21.008

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This Complaint alleged that statements made by the Judge to the Complainant during a virtual hearing where Complainant was present by telephone, violated Rule 2.3(A)-(B) of the Code of Judicial Conduct, which provides:

(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice. (B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, color, sex, religion, national origin, ethnicity, ancestry, place of birth, disability, age, sexual orientation, gender identity, marital status, socioeconomic status, or other grounds that are illegal or prohibited under federal or state law and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

The Judicial Conduct Board conducted an initial inquiry, including listening to the hearing in question, reviewing a response from the judge, and legal research regarding the Rule(s) in question.

This case raises the critical, and difficult, question of intent versus impact inherent in many claims of bias. Rule 2.3(B) does not elevate one of these factors over the other and appears to include both as considerations when faced with a potential violation. By prohibiting "words or conduct [that] **manifest** bias or prejudice, the Rule appears to recognize impact as a potential basis of a violation, given that regardless of the speaker's intent, their words could "manifest bias or prejudice" to a listener. And by prohibiting judges from "**engag[ing] in . . . bias . . .**" the Rule speaks more directly to the speaker's intent.

Viewed through this lens, this case presents a difficult question because intent and impact cut in different directions. On the one hand, it is clear from the record that the judge had no intent other than to treat Complainant fairly and appropriately, as shown by the judge's demeanor and other rulings during the hearing. On the other hand, the judge's specific words unquestionably had an impact on the Complainant causing belief that Complainant's intelligence was being questioned due to bias.

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With this reasoning, the Board found no evidence that the Respondent Judge violated any Canon in the Vermont Code of Judicial Conduct.

However, the Board takes very seriously statements by judges that, even unintentionally, cause litigants to feel that bias had any impact on the case. To that end, the Board has issued a private letter to the judge in this matter emphasizing the importance of judges being vigilant to avoid making such statements.

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. 21.008 is DISMISSED.

JUDICIAL CONDUCT BOARD

By: 

Michael N. Donofrio, Vice Chair