

JUDICIAL CONDUCT BOARD

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Steven A. Adler, Esq.
Chair

April 18, 2011

Closure Report of the Vermont Judicial Conduct Board

Re: Docket Nos. 09.010, 09.031 and 09.039;
Docket Nos. 8.056, 10.004 and 10.006

Pending before the Judicial Conduct Board were six separate Complaints concerning the same Judge. By agreement all of these Complaints were consolidated for hearing and disposition. The disposition is largely the product of an investigation by Special Counsel. The final resolution is based upon an agreement between the Judicial Conduct Board *en banc* and counsel for the Respondent Judge.

Attached is the Formal Complaint, Final Disposition Order and incorporated Stipulation which sets forth the details of and the outcome of the Complaints. The Complaints fall into two categories: the ownership by the judge of a commercial building with lawyer tenants; and complaints regarding the demeanor of the judge. A Stipulation for sanctions included two public reprimands and various other conditions, all detailed in the Final Disposition Order.

JUDICIAL CONDUCT BOARD

By: Steven A. Adler, Chair

SAA/clh

Attachment: Final Disposition Order and incorporated Stipulation
Formal Complaint

Before the Judicial Conduct Board
Formal Complaint in Dockets 08.056, 09.031 & 10.004

Concerning Judge Mark J. Keller

Hon. Mark J. Keller is advised that, pursuant to Rule 8 of the Vermont Supreme Court Rules for Disciplinary Control of Judges:

1. A formal hearing shall be conducted in this matter, in accordance with the Vermont Supreme Court Rules for Disciplinary Control of Judges.
2. Hon. Mark J. Keller has the right to answer in writing the allegations of this Formal Complaint within 21 days from the date of service, in the manner set forth in Rule 8(2) of the Vermont Supreme Court Rules for Disciplinary Control of Judges;
3. He further has the right to be represented by counsel with respect to this Formal Complaint, and to present evidence in his defense and to cross-examine witnesses at the hearing regarding this Formal Complaint.

Pursuant to Rule 8 of the Vermont Supreme Court Rules for Disciplinary Control of Judges, the Judicial Conduct Board complains as follows against the Honorable Mark J. Keller for violation of Vermont Code of Judicial Conduct Canons 1A, 2A, 3B(4) and 3B(7):

Factual Allegations

Introduction

1. In December 2008, Complainant Sharon Koons sent the JCB a formal written complaint against Judge Mark J. Keller alleging that Judge Keller had been discourteous and unfair to her and her husband during a December 1, 2008, preliminary hearing concerning a guardianship petition they had filed seeking custody of their grandson. A copy of the complaint, assigned Docket No. 08 056, was forwarded to Judge Keller at that time, and the JCB undertook an investigation.
2. In August 2009, Complainant Ronald Peltier sent the JCB a formal written complaint against Judge Mark J. Keller alleging, among other things, that Judge Keller had been discourteous and unfair to Mr. Peltier and his counsel at hearings in May and June of 2009 concerning Mr. Peltier's failure to meet his spousal support obligations. A copy of the complaint, assigned Docket No. 09.031, was forwarded to Judge Keller at that time, and the JCB undertook an investigation.
3. In January 2010, Complainant Kyle Lothian sent the JCB a formal written complaint against Judge Mark J. Keller alleging that Judge Keller had been discourteous and unfair to him during a pretrial conference regarding a juvenile matter attended by Mr. Lothian. A copy of the complaint, assigned Docket No. 10.004, was forwarded to Judge Keller at that time, and the JCB undertook an investigation.

4. After preliminary investigation, the JCB found probable cause to believe that Judge Mark J. Keller had violated Canons 1, 2 and 3 of the Vermont Code of Judicial Conduct through his actions complained of in these dockets individually, as further set forth specifically below, and had through the pattern of behavior at issue exhibited habitual intemperance subject to discipline under Rule 2 of the Vermont Supreme Court Rules for the Disciplinary Control of Judges. The JCB determined that such violations should be pursued through a consolidated Formal Complaint as set forth herein. *See In re O'Dea*, 159 Vt. 590 (1993) (JCB action on three separate complaints of judicial conduct raising substantially similar allegations)

Docket 08.056

Factual Background

5. On December 1, 2008, Judge Keller presided at a guardianship hearing in the matter of *Koons v. Rogers*, Docket No. 232-8-05 Frdm, in Vermont Family Court in Franklin County.
6. The *Koons* matter began as a contested parentage and visitation proceeding, wherein plaintiff Terry Koons, Jr. sought visitation with a child, opposed by the child's mother due to, among other reasons, pending child sexual assault charges against Terry Koons.
7. In the Fall of 2008, Terry Koons, Jr.'s parents, Sharon and Terry Koons, filed a guardianship petition in Vermont Probate Court as grandparents to the child at issue, seeking to become guardians of their grandchild.
8. Judge Keller transferred that probate matter, upon motion by the child's mother, to the Family court for disposition with the parentage matter referenced above.
9. The December 1, 2008 hearing was the first court hearing concerning the grandparents' guardianship petition. The grandparents were represented at that hearing by counsel.
10. At that hearing, Judge Keller sought to set a schedule for the guardianship proceeding, and to inquire into the basis for the guardianship petition.

Allegations of Complainant

11. Sharon Koons filed a complaint with the JCB after the December 1, 2008 hearing.
12. Sharon Koons alleged that, during the December 1, 2008 hearing, Judge Keller cut off her lawyer repeatedly and did not allow him to present his case on behalf of the grandparents.
13. Sharon Koons alleged that Judge Keller appeared biased against her petition, and discouraged her from pursuing it.
14. She further stated that her counsel offered "to pay our money back because he didn't [get] a chance to present our case."
15. Sharon Koons also complains that Judge Keller ordered at this initial hearing that she and her husband pay for a lawyer for their grandchild in the guardianship proceeding, placing a \$10,000 retainer to the Court for that purpose if they wished to proceed with the guardianship petition.

Hearing Tape Review

16. A review of the hearing tape confirms that Judge Keller did order the grandparents to pay for the court-appointed counsel for the child with respect to the guardianship petition, and required them to pay a \$10,000 retainer to the Court for that purpose if they wished to proceed with the guardianship petition.
17. Vermont statutes provide for the appointment of counsel to represent the child in a guardianship proceeding, 14 V.S.A. § 3065, and do not provide that petitioner shall pay for such counsel.
18. A review of the hearing tape confirms that Judge Keller grew short with complainant's lawyer at the hearing, cutting off responses and refusing to hold off on his ruling from the bench with respect to the payment of appointed counsel for the child.
19. A review of the hearing tape confirms that Judge Keller discouraged complainants from pursuing a guardianship petition and gave them only a brief period of time to pay the Court-ordered \$10,000 retainer if they wished to pursue the petition.

Findings Regarding Violation of Judicial Canons - Docket 08.056

20. Judge Keller's treatment of the litigants and their counsel fell below the high standard of conduct designed to promote public confidence in the integrity and impartiality of the judiciary as required by **Canons 1A and 2A**, particularly with regard to his decision to order the complainants to pay a large retainer to the Court for appointment of an attorney for their grandson.
21. This ruling shows a lack of patience, dignity and courtesy that should be afforded these litigant in violation of **Canons 1A, 2A and 3B(4)**.
22. The manner in which he handled the complainant's guardianship petition and ordered payment of a significant retainer without meaningful opportunity to respond also deprived complainants of their right to be heard in violation of **Canon 3B(7)**.
23. The JCB finds probable cause to believe that Judge Keller maintained an adversarial and argumentative tone with complainant and counsel in violation of these Canons.

Docket No. 09.031

Factual Background

24. The complainant in Docket No. 09.031 is Ronald Peltier, who was ordered to pay support to his wife Sylvia Peltier by Final Order of Divorce dated August 27, 2008. Judge Keller presided over several hearings regarding the wife's motions to enforce the support obligation.
25. At various points during his oversight of the matter, Judge Keller found Mr. Peltier in contempt of court for his failure to pay spousal support pursuant to the Final Order, and ordered Mr. Peltier detained in correctional facilities.
26. During hearings in May and June of 2009, Judge Keller ordered Mr. Peltier to make concrete efforts to secure a job to help pay his spousal support; ordered Mr. Peltier detained for his failure to follow the Court's order; and assigned Mr. Peltier court-appointed counsel to represent Mr. Peltier with respect to the contempt finding.

Allegations of Complainant

27. Mr. Peltier offers several specific complaints against Judge Keller related to his contempt orders and detentions.
28. In addition, and specifically relevant to this Formal Complaint, Mr. Peltier asserts that Judge Keller refused to allow Mr. Peltier's court-appointed counsel to present Mr. Peltier's case regarding his job search at two hearings on June 12 and 15, 2009. As summarized in his complaint, Mr. Peltier states that his attorney was "hushed by the judge and because of his intimidation by this judge, didn't attempt to defend [complainant] as he is obligated to do." Docket No. 09.031 Complaint at 2.

Hearing Tape Review

29. At the first hearing, held Friday, June 12, 2009, Judge Keller received from court-appointed counsel Scott Bortzfield the job log Judge Keller had ordered Mr. Peltier to complete, showing evidence of his job search.
30. Counsel for complainant's wife, Attorney Kasey Bryan, scanned the job log and noted deficiencies in it. Specifically, Attorney Bryan questioned the log's entry regarding available jobs at Fletcher Allen Health Care, which read "none."
31. Judge Keller focused upon this issue and spent several minutes of the hearing online, reviewing databases for two listed employers. He found several jobs listed and asked Attorney Bortzfield and Mr. Peltier why the job log indicated "none," with respect to available jobs at FAHC.
32. Although both Mr. Peltier and his counsel, Attorney Bortzfield, attempted to tell Judge Keller that complainant had meant "no jobs for which [Peltier] is qualified" when he wrote "none" on the job log, Judge Keller repeatedly cut off the explanation and further disagreed with complainant and his counsel that certain available jobs were beyond Mr. Peltier's qualifications.
33. A review of the hearing tape supports the finding that throughout the hearing on June 12th, Judge Keller became more combative with Mr. Peltier and his attorney. Attorney Bortzfield was unable to complete any argument without interruption during the hearing, and was unable to discuss with the Judge the applications that his client apparently did submit for jobs, as reflected in the job log and mentioned by Mr. Peltier at the hearing.
34. At the conclusion of the June 12th hearing, Judge Keller found Mr. Peltier's efforts inadequate, advised him to work to find a job, and ordered him to appear every day at 3:30 p.m. until a job had been secured; Judge Keller further warned that Mr. Peltier would be found in contempt and sent to jail if Judge Keller were not satisfied with his efforts to secure employment.
35. The following Monday, June 15, 2009, Attorney Bortzfield presented to Judge Keller ten completed job applications submitted by Mr. Peltier from his job search over the weekend.
36. A review of the hearing tape shows that Attorney Bortzfield asked his client to bring completed applications, rather than the summary job log, due to Judge Keller's finding at the prior hearing that the job log had been inadequate.

37. Judge Keller chastised Mr. Peltier and counsel for failing to complete the summary job log, stating that review of the applications themselves was too time consuming.
38. Counsel also submitted to Judge Keller evidence of a "temporary job" secured by Mr. Peltier at Green Mountain Transportation Agency; a position to drive at least 500 miles per week picking up GMTA customers for various appointments, reimbursed at a rate of 0.55 cents/mile, yielding a minimum \$275/week to the complainant.
39. After review of the documentation, Judge Keller informed counsel that the "job" clearly was instead volunteer work, as expressly stated in the GMTA letter submitted to the Court, and that reimbursement for mileage at the rate of 0.55 cents/mile did not constitute income.
40. Although Attorney Bortzfield attempted to argue that the payments did help Mr. Peltier's cash flow as a stop-gap measure, and would allow him to pay some of his wife's support, Judge Keller repeatedly cut counsel off, calling it a "ludicrous argument."
41. A review of the hearing indicates that Judge Keller rarely allowed Attorney Bortzfield to complete even a single sentence stating, for example, "stop the argument; you've lost the argument; don't waste more time."
42. Judge Keller then ordered Mr. Peltier to testify regarding his job search between the Friday afternoon hearing and the Monday afternoon follow-up hearing, and found the ten submitted applications and other job search efforts over the weekend inadequate.
43. He further ordered that Mr. Peltier was not to engage in volunteer driving for GMTA during business hours, rejecting complainant's argument that the order would foreclose him from this work and the mileage reimbursement payment it provided.
44. Judge Keller ordered that Mr. Peltier must instead spend all day, every day, looking for a job until one had been secured; and he remanded Mr. Peltier to custody overnight.

Findings Regarding Violation of Judicial Canons - Docket 09.031

45. Judge Keller's treatment of Mr. Peltier's court-appointed counsel at the June 12th and 15th 2009 hearings does not meet the standard of decorum and respect that should be accorded to litigants by judges under Canon 3B(4), and it also constitutes a clear violation of the mandatory terms of Canon 3B (7).

Docket No. 10.004

Factual Background

46. Docket No. 10.004 arises out of a January 2010 complaint by Kyle Lothian concerning Judge Keller's judicial temperament at a January 6, 2010 Family Court pretrial hearing concerning a juvenile matter.

Allegations of Complainant

47. Mr. Lothian complains that Judge Keller, during a pre-trial hearing regarding a juvenile matter attended by Mr. Lothian on January 6, 2010, treated Mr. Lothian aggressively and disrespectfully. Mr. Lothian states that Judge Keller went beyond the topic of the pre-

trial hearing, delving into issues personal to Mr. Lothian such as family counseling and his relationship with his ex-wife. He alleges that Judge Keller cut him off and lectured him during the hearing in a manner that called Mr. Lothian's behavior and reputation into question. "I feel like he was trying to bait me into an altercation . . . He was pushing me, trying to get me angry and blow up . . . I felt attacked and this is why I believe he abused his powers."

Hearing Tape Review

48. A review of the hearing tape supports complainant's allegation that Judge Keller went well beyond the topic of the hearing at hand and delved into personal matters concerning Mr. Lothian in an aggressive and confrontational manner.
49. For example, at one point in the hearing, Judge Keller said to Mr. Lothian, "[y]ou seem to be a man filled with anger," and when Mr. Lothian admitted to feeling upset at the situation, the Judge stated "it seems to be beyond that."
50. Later, Judge Keller addressed Mr. Lothian's ex-wife, also in attendance at the hearing, and indicated to her that he would not allow Mr. Lothian to "tee off" on her in the courtroom, and he then instructed Mr. Lothian to have no "negative interaction" with his ex-wife in the courthouse, or anywhere else, implying that Mr. Lothian had been abusive or aggressive to his ex-wife, though there is nothing or within Judge Keller's knowledge to suggest that.

Findings Regarding Violation of Judicial Canons - Docket 10.004

51. Judge Keller's treatment of Mr. Lothian fell below the high standard of conduct designed to promote public confidence in the integrity and impartiality of the judiciary as required by **Canons 1A and 2A**.
52. His conduct toward Mr. Lothian showed a lack of patience, dignity and courtesy that should be afforded to those appearing before the Court in violation of **Canons 1A, 2A and 3B(4)**.

WHEREFORE, the JCB finds probable cause to believe:

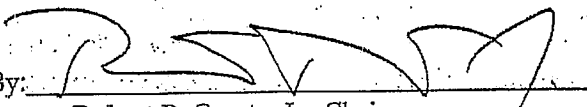
53. With respect to Docket No. 08.056, Hon. Mark J. Keller has violated Vermont Code of Judicial Conduct Canons 1A, 2A, 3B(4) and 3B(7) through his intemperate behavior and treatment of the complainant and complainant's counsel in the guardianship proceeding.
54. With respect to JCB Docket No. 09.031, that Hon. Mark J. Keller has violated Vermont Code of Judicial Conduct Canon 3B(7) through his failure to afford the complainant and his counsel the right to be heard at the June 2009 hearings as set forth above;
55. With respect to JCB Docket No. 10.004, that Hon. Mark J. Keller has violated Vermont Code of Judicial Conduct Canons 1A, 2A, and 3B(4) through his intemperate treatment of Mr. Lothian at the January 6, 2010 hearing; and

56. With respect to all Docket Numbers at issue; that Hon. Mark J. Keller's behavior establishes an ongoing pattern of conduct lacking the decorum, patience and impartiality required under Canons 1A, 2A and 3B(4).

The JCB shall set a formal hearing in these matters and reserves the right to impose all disciplinary measures available to it under the Vermont Supreme Court Rules for the Disciplinary Control of Judges if any of the above-recited violations are shown by clear and convincing evidence after hearing.

Dated: August 19, 2010

By:


Robert P. Gerety, Jr., Chair
For The Judicial Conduct Board

**JUDICIAL CONDUCT BOARD
State of Vermont**

BEFORE THE JUDICIAL CONDUCT BOARD

**Concerning Judge Mark J. Keller
Docket Nos. 09.010, 09.031 and 09.039;
Docket Nos. 8.056, 10.004 and 10.006**

FINAL DISPOSITION ORDER

Pending before the Judicial Conduct Board are seven separate Complaints concerning Judge Mark J. Keller. By agreement of Judge Keller, with the advice and consent of his counsel, all of these Complaints were consolidated for hearing and disposition. The disposition is largely the product of an investigation by Special Counsel Elizabeth H. Miller, Esquire. The final resolution is based upon an agreement between the Judicial Conduct Board *en banc* and counsel for Respondent Judge Keller.

The Board accepts the "Stipulation Concerning Disposition" and the agreed upon sanctions, which Stipulation is attached hereto and incorporated by reference in this Order.

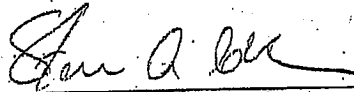
As further detailed in the attached Stipulation, the Vermont Judicial Conduct Board hereby Orders that Judge Mark J. Keller is PUBLICALLY REPRIMANDED based upon his former ownership of rental office space occupied by lawyers who periodically appeared before him. Additionally, Judge Mark J. Keller is PUBLICALLY REPRIMANDED in connection with a series of so-called "demeanor" complaints.

Additional sanctions are imposed and agreed to by Judge Mark J. Keller, which include the involvement of a mentor judge, continuing substantive educational seminars and the establishment of a counseling relationship with a licensed professional.

This Stipulation deals with all seven separate Complaints. Pursuant to Rule 9 of

the Rules of Supreme Court for Disciplinary Control of Judges, this Order incorporating the Stipulation Concerning Disposition shall be final if no appeal is filed within thirty (30) days of this date.

Dated at St. Johnsbury, Vermont this 16th day of February, 2011.

A handwritten signature in black ink, appearing to read "Steven A. Adler", written over a horizontal line.

Steven A. Adler, Chair
Vermont Judicial Conduct Board
For the Board

BEFORE THE JUDICIAL CONDUCT BOARD

Concerning Mark J. Keller: Docket Nos. 09.010, 09.031 and 09.039;
Docket Nos. 8.056, 09.031, 10.004 and 10.006

STIPULATION CONCERNING DISPOSITION

Respondent Judge Mark J. Keller hereby stipulates and agrees that the Judicial Conduct Board may adopt the following factual admissions and impose the following sanctions. This stipulation is largely the product of investigation and negotiation with Special Counsel Elizabeth H. Miller, who resigned as Special Counsel after accepting a position in the Executive Branch. Respondent waives any claim of procedural irregularity and further waives any right to evidentiary hearings on either the merits of the complaints or on sanctions if the following stipulation is accepted and approved by the Judicial Conduct Board.

SUMMARY OF VIOLATIONS AND DISPOSITION

Respondent Judge Keller did not comply with the Vermont Code of Judicial Conduct: (a) Canon 4, in connection with his former one-third interest in 289 College Street, a commercial building owned by a partnership in which Respondent was a general partner; Canon 3(E) and (F) because he failed to disqualify himself from cases in which his partners in the business, and tenants in the building, appeared as counsel; and Canon 3(B)(4) because he was not sufficiently patient, dignified and courteous in his official capacity as a presiding judge.

Canon 4(D) in relevant part prohibits a judge from "engag[ing] in financial and business dealings that: . . . (b) involve the judge in frequent transactions or continuing

business relationships with those lawyers or other persons likely to come before the court on which the judge serves." It also bars judges from being general partners in "any business entity" except a closely held family business or one primarily engaged in investments of family members. Finally, the Canon requires judges to "manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall relinquish investments and other financial interests that might require frequent disqualification." Canon 4(D) §§ (1)(b), (3) and (4).

Canon 3(E) requires a judge to disqualify himself in any proceeding in which his impartiality might reasonably be questioned, and to "keep informed about the judge's personal and fiduciary economic interests" so that he may appropriately disqualify himself when necessary. In addition, Canon 3(F) requires a judge who would otherwise be disqualified because of a financial relationship to a party or attorney to "disclose on the record the basis of the judge's disqualification" and allow the parties to consider "out of the presence of the judge, whether to waive disqualification." The judge may then proceed in the case only if all parties waive the conflict.

As set forth below, Respondent will enter admissions of violations of the Code of Judicial Conduct with respect to a) the consolidated Formal Complaint in Docket Nos. 09.010, 09.031 and 09.039, and b) the individual counts regarding Docket No. 08.056 set forth in the consolidated Formal Complaint in Docket Nos. 08.056, 09.031, 10.004 and 10.006. In addition, he wishes to resolve all the pending complaints at this time, accept appropriate sanctions as detailed below, based upon all pending complaints, and take all

steps as are necessary to improve his performance as a judge. Respondent understands and agrees that the Board may take into account all of his conduct in determining the appropriate sanction for violations of the Code of Judicial Conduct, even if individual instances as set forth in the complaints are not shown by clear and convincing evidence to be violations of the Code of Judicial Conduct.

Formal Complaint in Docket Nos. 09.010, 09.031 & 09.039:

In connection with the August 19, 2010 Formal Complaint relating to Respondent's partnership interest in 289 College Street Associates (Docket numbers 09.010, 09.0310 and 09.039), Respondent admits that he did not comply with Canon 4 of the Code of Judicial Conduct. Specifically, he served as a general partner in the 289 College Street Associates partnership, from 1989 through his appointment to the judiciary, until he transferred his partnership interest in September 2010, in violation of Canon 4D(3) & (4).

Respondent also admits that he therefore had continuing business relationships with lawyers who appeared before him in court and were either tenants of or partners in his business, in violation of Canon 4(D)(1)(b). In addition, he admits that his practice of placing a written notice on the tables in the courtroom did not satisfy the requirements of Canon 3(E)-(G).

Formal Complaints in Docket Nos. 08.056, 09.031, 10.004 & 10.006:

With respect to the consolidated Formal Complaint filed in Docket Nos. 08.056, 09.031, 10.004, Respondent disputes whether his conduct in a number of the individual dockets constituted a clear and convincing violation of the Code of Judicial Conduct. Respondent admits that he did not comply with Canon 3 of the Code of Judicial Conduct in

Docket No. 08.056, in that he was not patient, dignified and courteous to complainants Sharon Koons and Terry Koons, and their counsel. Regarding the other individual complaints at issue in this consolidated Formal Complaint, Respondent acknowledges that he might well have reduced or avoided complaints by individuals against him if he had tempered his comments toward individual litigants and/or their counsel and acted with greater patience and courtesy in the courtroom. Respondent acknowledges that the sanctions imposed by this Stipulation appropriately address the underlying conduct at issue in all of these complaints, even though Respondent admits a violation by clear and convincing evidence only with respect to the Koons' complaint and the other individual complaints contained within the Formal Complaint shall be dismissed as a part of this Stipulation.

Respondent disputes whether the charge in 10.006 would be proven by clear and convincing evidence. In light of this stipulation and resultant sanctions, the Board dismisses the separate Formal Complaint filed in Docket No. 10.006.

AGREED FACTUAL ADMISSIONS & VIOLATIONS

Respondent Judge Keller agrees the Board may find as true the following factual admissions concerning the above-referenced Formal Complaints:

A. Judge Keller's Status as a General Partner in 289 College Street Associates

(Docket Nos. 09.010, 09.031, 09.039)

1. In 1989, before becoming a judge, Judge Keller and seven other individuals from Chittenden County formed a Vermont partnership known as 289 College Street Associates ("the partnership" below). All partners, including Judge Keller, were "general"

partners; the partnership has never included a class of limited partners.

2. The partnership was formed to acquire office space for the partners by purchasing a building at 289 College Street in Burlington, Vermont. The parties also intended to rent unused space to other tenants.

3. The building consists of office space and one residential apartment. The original partners consisted of four lawyers and four real estate appraisers.

4. Beginning in 1989 and continuing through the present, some of the commercial space and the apartment were rented out to individuals and/or businesses who were not partners in the partnership.

5. Judge Keller was in private practice at 289 College Street from 1989 until he was appointed a Vermont District Court judge in 1999.

6. When Judge Keller was appointed judge, he did not review Canon 4D of the Judicial Code. Judge Keller agrees that he had a duty to know the requirements of Canon 4D.

7. The partnership agreement has not been amended since it was signed in 1989.

8. From the time Judge Keller became a judge in 1999, until his recent resignation from the partnership, he has not taken an active role in management of the partnership. The decisions made by the partnership have been made by majority vote of the partners, with Judge Keller's partners making nearly all decisions without his direct involvement.

9. Until 2008, he did not know the identity of all of the tenants at the building and did not have a means in place to make such inquiry. Judge Keller acknowledges that he should have kept informed of the tenancy in the building for purposes of assessing conflicts.

10. In the investigation of this matter there was no evidence discovered of a pattern on the part of Judge Keller of either favoritism for or prejudice by Judge Keller against attorneys who rented space from 289 College Street Associates.

11. On September 16, 2010 Judge Keller divested himself of his partnership interest in the property, by resigning from the partnership and by receiving in return a promissory note from the partnership for his one-third interest in the partnership. From September 16, 2010 forward Judge Keller has not been a partner in the partnership.

12. In November 2010, the partnership paid Judge Keller in full for his interest in the partnership. He has no further association with the partnership.

13. Respondent admits that the above facts constitute a violation of Canon 4 of the Code of Judicial Conduct. Specifically, Respondent admits that he served as a general partner in the 289 College Street Associates partnership, from 1989 through his appointment to the judiciary, until he transferred his partnership interest in September 2010, in violation of Canon 4D(3) & (4). He further admits that his failure to keep informed of who his tenants were was a violation of Canon 3(E)(2), that his failure to promptly terminate his partnership after becoming a judge was a violation of canon 4(D)(4), and that his written notices of his interest in the business failed to meet the requirements of Canon 3(E)-(G).

14. Additional facts relevant for sanctions.

A. Notice to parties and to State's Attorney's office. The JCB wrote to Respondent on December 2, 2008 expressing concern that Judge Keller did not know the identity of lawyers who were also tenants at the partnership building. In the letter concern was expressed that if Judge Keller did not know the identity of lawyers those lawyers "may be

appearing in front of you without you disclosing that fact to the parties." In response Judge Keller obtained the names of lawyers/tenants in the building. Thereafter he posted written notices at plaintiff's and defendant's tables as well as, in juvenile cases, at the other tables where additional parties and/or guardians ad litem were seated in the courtrooms where he presided; the notice gave the names of lawyers who were also tenants at the 289 College Street building and stated: "[i]f you feel that it is a conflict of interest for me to hear your case due to my ownership in this building or because of the identity of one or more of the lawyer/tenants, please let me know and we will discuss whether you should have a substitute judge." These notices were also posted at the entrance to the court room.

In March, 2009 the Board wrote to Judge Keller and stated its concern that the steps he had taken were not sufficient and drew his attention to Canons 3(E) and 3(F). Enclosed with that letter was an article outlining a judge's responsibilities when the judge owned property that was rented to lawyers who appeared before him. In the article it was reported that the greater proportion of jurisdictions required disqualification when a judge's lawyer/tenant appeared before the judge, while a lesser number (seven) appeared to permit the judge to continue to preside. There was no definitive ruling in Vermont on this issue.

Periodically one of Judge Keller's partners, Norman Blais, appeared before Judge Keller, mainly in criminal matters. In its letter of December 2, 2008, the JCB stated that Judge Keller had advised a JCB member, when asked, that he (Judge Keller) disclosed this relationship with Mr. Blais to the parties when Attorney Blais appeared. The Board stated "We presume you would also recuse yourself in such cases if any party so requested." Judge Keller did regularly disclose the relationship when Mr. Blais appears, and until these charges

were brought he states that he believed he was conducting himself satisfactorily to the Board. The State's Attorney's office did not object to Judge Keller presiding.

[Judge Keller had relatively few divorce matters with Mr. Blais. He generally arranged not to preside in any contested hearings. In other divorces, with the consent of litigants, Judge Keller would preside at status conferences, on issues of scheduling and the like.]

Because the issue of propriety had been raised, Judge Keller told his partners in March, 2009, that he wanted the building sold. The partners contacted realtors for two parties who had expressed interest in the building in the 2007 - 2008 time frame, before Judge Keller's first contact from the JCB. Although one buyer was still interested, a price could not be agreed to. Judge Keller's partners did not wish to buy him out because of the cost of refinancing (including the amount they would have to borrow to buy out Judge Keller and the interest rates for commercial loans). Judge Keller continued to own his interest in the partnership through 2009 and into 2010.

Both the Board and Judge Keller focused on the requirements of Canon 3 for the period December, 2008 until April, 2010. In April, 2010 the Board wrote a letter to Judge Keller indicating that his interest in the building implicated Canon 4 as well. Judge Keller consulted with counsel and learned he could not keep his general partnership interest under Rule 4D(3).

Judge Keller increased his efforts over the summer of 2010 to divest himself of the building, and eventually did so on September 16, 2010. Judge Keller states that he believed until after he received the April, 2010 letter, that he was in compliance with the applicable

canons. Judge Keller does not dispute that he should have understood the Rule 4(D)(3)

requirements.

B. Annual Financial Reports. Under Canon 4(H)(2) Judge Keller was required annually to report compensation received for "extra-judicial activity". Judge Keller did not report income from his partnership interest. The reporting forms used through 2009 included a note that reporting of "investment income...was not required" (underlining in original). Judge Keller states that he believed that income from the building was "investment income."

B. Complaint of Sharon Koons (Docket 08.065)

1. On December 1, 2008, Judge Keller presided at a guardianship hearing in the matter of Koons v. Rogers, Docket No. 232-8-05 Frdm, in Vermont Family Court in Franklin County.

2. The Koons matter began as a contested parentage and visitation proceeding, in which plaintiff, Terry Koons, Jr., sought visitation with a child, opposed by the child's mother due to pending criminal charges against Terry Koons.

3. In the fall of 2008, Terry Koons, Jr.,'s parents, Sharon and Terry Koons, filed a guardianship petition in Vermont Probate Court in Franklin County as grandparents to the child at issue, seeking to become guardians of their grandchild.

4. Judge Keller transferred that probate matter, upon motion of the child's mother, to the family court for disposition with the parentage matter referenced above.

5. The attorney for Terry Koons, Jr., stated at the divorce hearing that he also represented the grandparents/complainants in their guardianship proceeding.

6. Complainants' counsel requested orally that a guardian ad litem be appointed for the minor child. Judge Keller indicated that an attorney would be appointed as well for the child, without objection.

7. Judge Keller inquired of the Koons' counsel how much time it would take for him to prepare his case in the guardianship proceeding, and therefore how much his fees would be, stating to counsel that the child's attorney should be paid a corresponding amount to perform his/her services.

8. After that exchange, Judge Keller stated that the Koons would be required to pay a \$10,000 retainer into the court for the purpose of retaining an attorney for the child, a position not supported by law.

9. A review of the hearing tape confirms that Judge Keller grew short with complainants' lawyer at the hearing, cutting off responses and not retracting his directive from the bench that a \$10,000 retainer would be required.

10. Judge Keller believed that he had been inappropriate with the Koons and their attorney, and as a result he sought and received counseling from Robert Wolford, a counselor specializing in anger management issues. Judge Keller completed five sessions with Mr. Wolford and adopted certain techniques to reduce the likelihood of his being excessively argumentative with litigants or lawyers.

11. Judge Keller, in his comments and demeanor, discouraged complainants from pursuing a guardianship petition and provided only a brief period of time within which to pay the \$10,000 retainer fee. In addition, his demeanor was excessively confrontational with

the Koons and their attorney. The Board also believes that there was no legal basis for requiring payment of the \$10,000.00 retainer.

12. Respondent admits that the above facts constitute a violation of Canon 3 of the Code of Judicial Conduct because Respondent was not sufficiently patient, dignified and courteous in his official capacity as a presiding judge.

13. Additional facts relevant for sanctions.

The other individual complaints referenced at page 2 of this STIPULATION consist of first: a complaint filed by K.L. the father of a juvenile in a juvenile case, and second: an unrelated complaint by Ronald Peltier, who was before the court for contempt proceedings based on non-payment of spousal support.

(a) Juvenile case. In the juvenile case Judge Keller represents that he was advised by the court officer, Deborah Stevens, some time before a preliminary hearing, that the juvenile's mother was afraid to come into the courtroom with the father, Mr. L., present. Judge Keller represents that he told the court officer to tell the mother that she did not have to be afraid and that she should come into the courtroom. When Mr. L. began to speak about the mother in court the judge interrupted him and said in effect that the court was looking forward and not into the past. Mr. L. appeared to Judge Keller to be angry and Judge Keller said so to him, to which Mr. L. stated he was upset. Judge Keller said it seemed to be more than that and that Mr. L. appeared to be filled with anger. Mr. L. said that he was "very upset". Shortly after this exchange Judge Keller, asked the mother what could be done to make her more comfortable at the next hearing, to which the mother replied "I don't know". Judge Keller told the mother that Mr. L. would not be allowed to "tee off" on the mother. As

the hearing was close to ending Judge Keller asked Mr. L. did he "understand that" (i.e. that he was not to "tee off" on the mother), to which Mr. L. said "yes sir I do". the Judge asked "any question?" Mr. L. said no. Judge Keller then stated that this applied in the court or in the building and any place outside, saying finally "I don't want any negative interaction between [the two parents]". Judge Keller acknowledges that his statements and questions to Mr. L. were not justified. There was not evidence before the court that Mr. L. had abused the juvenile's mother verbally (or physically) in the past. Judge Keller was forceful with Mr. L. and the judge's tone was upsetting to Mr. L. Mr. L. believed that Judge Keller was accusing him of being abusive. Judge Keller states that he intended the phrase "tee off" to mean being angry and accusatory. Judge Keller acknowledges that his approach could reasonably be viewed as confrontational and as assuming conduct by Mr. L. that was not established in the record. Judge Keller believes that he could have used a different tone and different language and still made the same point with Mr. L. without having the effect of having Mr. L. feel he was being accused of being abusive and feel he was being provoked. Judge Keller states that it was not his intention to provoke Mr. L.

(b) Peltier divorce. In the year after Mr. Peltier's 2008 divorce several motions to enforce and/or for contempt were filed against him for non-payment of spousal support. In contempt proceedings in June 2009 Judge Keller found Mr. Peltier had not complied with his work-search obligations by not filling out the "log" of job contacts Judge Keller had ordered him to provide, by making inadequate job search efforts between a hearing on June 12, 2009 and June 15, 2009, and by proposing that the court approve as an income-generating occupation a position as a volunteer driver for which Mr. Peltier would receive a

mileage allowance of .55 per mile but no pay. Judge Keller raised his voice when he rejected the argument that this position was an appropriate way to supply some funds to Mr. Peltier's ex-wife. Judge Keller said that Mr. Peltier's time should be spent looking for a job and not conducting volunteer driving for mileage reimbursement. When Mr. Peltier's attorney continued to ask the judge to consider the volunteer position the judge interrupted him and called the argument (treating the volunteer position as a "job") "ludicrous". When the attorney re-visited the argument again Judge Keller interrupted him and stated, with his voice raised "stop the argument; you've lost the argument; don't waste more time."

Although Mr. Peltier's attorney has stated that he did not feel that the judge was inappropriate in the manner in which he rejected the argument, Judge Keller acknowledges that interrupting the attorney and deriding the attorney's argument created a danger that a litigant would feel he or she had not been "heard". Judge Keller agrees that a patient and less argumentative approach could have conveyed the judge's point to Mr. Peltier without creating that additional danger.

AGREED SANCTIONS

Respondent agrees that participation in the sanctions set forth herein is desirable to ensure compliance with Canon 1 of the Judicial Conduct Code, which states that "[a] judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved." Respondent agrees that failure to reasonably and substantially comply with the terms of this Stipulation shall constitute a separate violation of the Judicial Conduct Code Canon 1, enforceable by Judicial Conduct Board proceeding in accordance.

with the Rules for Disciplinary Control of Judges. Respondent Judge Keller agrees to the following sanctions in resolution of all pending complaints and the agreed violations of the Code of Judicial Conduct as set forth herein:

A. Formal Complaint in Docket Nos. 09.010, 09.031 & 09.039:

1. A public reprimand, as provided in the Rules for the Disciplinary Control of Judges, Rule 6(2), regarding the agreed violations and sanctions as set forth in this Stipulation.

2. Respondent shall, if there exists any potential conflict issue concerning a personal financial investment decision, promptly obtain an opinion from the Vermont Judicial Ethics Committee (created by Administrative Order #35), before making any such decision.

3. Within 30 days from the Board's entry of sanctions, Respondent shall resubmit his annual financial disclosure for the years 2007, 2008, and 2009, including any income from his interest in 289 College Street Associates.

B. Formal Complaint in Docket Nos. 08.056, 09.031, 10.004 & 10.006:

1. A public reprimand, as provided in the Rules for the Disciplinary Control of Judges, Rule 6(2), which shall include the agreed violations and sanctions as set forth in this Stipulation and a statement regarding the other conduct complaints in which Code violations are not agreed to but nevertheless appropriately may be used for purposes of sanctions.

2. Conditions on the performance of Judge Keller's judicial duties for a period of two years, as provided in the Rules for the Disciplinary Control of Judges, Rule 6(2), as follows:

a. With the assistance of and approval by the Administrative Judge, Judge Keller shall obtain and consult with a mentor judge. The purposes of the mentoring shall be:

- (1) to assist Respondent in maintaining appropriate decorum in family court or other cases that may be emotionally charged or that may otherwise present challenges to judicial patience; and
- (2) to make recommendations to Respondent in the event any case or cases present challenges to the judge with regard to patience, temperate conduct, and the like, such recommendations to include, but not be limited to, obtaining additional professional or other outside assistance that is reasonably designed to address such issues, including assistance from a licensed mental health professional as noted below in subparagraph (g).

b. Respondent shall confer with the mentor judge once a month for a two-year period after entry of this Stipulation, and shall follow the reasonable recommendations of the mentor and/or Administrative Judge so that Respondent's judicial performance will comply with the requirements of Canon 3B(4) and related conduct rules.

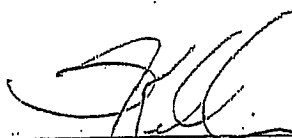
c. Respondent shall obtain from the mentor judge a short written report of the monthly meetings, including any recommendations made to Respondent and observations regarding Respondent's activities and performance, and shall forward such report to the Judicial Conduct Board Chairperson, with a copy to the Administrative Judge.

d. Respondent will attend and complete, at his expense, 15 hours of substantive educational seminar(s) acceptable to the mentor judge, that addresses judicial conduct in family court and other potential high-stress court cases. Such seminar(s) shall be attended by Respondent in-person unless other format of attendance is approved in writing by the Chair of the JCB. For example, without limitation, courses offered by the National Judicial College appear appropriate for this purpose. Respondent shall submit a brief written report to the JCB, with a copy to the Administrative Judge, after completion of such seminar(s).

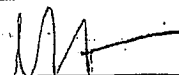
e. Respondent agrees that counseling by a licensed professional may prove helpful to him, in addition to the professional mentoring set forth above. As a condition of this Stipulation, Respondent will establish, at his expense, a client-therapist relationship with a licensed counselor and will inform the mentor judge and the Chair of the Judicial Conduct Board of the identity of such individual. Respondent shall communicate with the mentor judge regarding the frequency and duration of any such therapy, and the mentor judge may include observations about the use and effectiveness of any such therapy in the written reports submitted to the Chairperson of the Judicial Conduct Board and Administrative Judge.

WHEREFORE, Respondent Mark J. Keller and the Judicial Conduct Board agree to this Stipulation Concerning Disposition in full resolution of all pending Formal Complaints as referenced above.

Dated: 2/2/2011

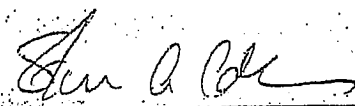

Hon. Mark J. Keller

Dated: 2/4/2011


Stephen Blodgett
Counsel to Hon. Mark J. Keller

AGREED TO AND ORDERED BY THE JUDICIAL CONDUCT BOARD:

Dated: 2/16/11


Steven A. Adler, Chair
For the Judicial Conduct Board