

## 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  
Consolidated Formal Complaint**

**Concerning Judge Mark J. Keller, Docket Nos. 09.010, 09.031, and 09.039**

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 in Docket Nos. 09.010, 09.031, and 09.039 for violation of Vermont Code of Judicial Conduct Canons 3 and 4 as follows:

**Factual Allegations**

1. The Honorable Mark J. Keller is a partner in 289 College Street Associates, an real estate partnership first registered with the Vermont Secretary of State in 1992 (SOS File No. 0090779). Norman Blais, Judge Keller's former law partner, and Michael O'Brien, a real estate appraiser, are the other two current members of this partnership.
2. Judge Keller and the other partners formed 289 College Street Associates while Judge Keller was in private practice; he has maintained his interest in the partnership since leaving private practice and becoming a state court judge.
3. 289 College Street Associates owns a commercial building with twelve tenants.
4. Among the current tenants in the building are attorneys who practice routinely in the Vermont District and Family Courts, wherein Judge Keller has been assigned.
5. Judge Keller's partner in the venture, Norman Blais, also practices in state court.
6. Judge Keller and his partners assert that Judge Keller is not involved in any day-to-day decisions with respect to the real estate partnership or its relationship with tenants; however, the business is a general partnership and there are no formal distinctions in the responsibilities or duties of the partners.
7. After the Judicial Conduct Board learned of the partnership, the JCB initiated Docket No. 09.010 to investigate whether this business venture violated the Vermont Code of Judicial Conduct.

8. At that time, the JCB expressed its concern to Judge Keller regarding his role in 289 College Street. Thereafter, Judge Keller posted a "Notice of Potential Conflict" at his courtroom doors and counsel tables. This Notice discloses his co-ownership of 289 College Street with Attorney Blais, lists the attorney tenants in the building, and states, "[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."
9. Judge Keller does not routinely take steps other than the posted notice to inform litigants of his business interest and does not automatically recuse himself in matters in which attorney tenants appear.
10. After initiating Docket No. 09.010, the JCB received two complaints from litigants concerning Judge Keller's ownership of 289 College Street.
11. In Docket No. 09.031, complainant Ronald Peltier alleges, *inter alia*, that one of his ex-wife's counsel in divorce proceedings was Suzanne Brown, Esq., a tenant of the building. Mr. Peltier recites this as one fact in support of his claim of Judge Keller's bias against him.
12. In Docket No. 09.039, complainant Mark Mumley cites his former counsel's tenancy in 289 College Street among the reasons why he believed a criminal complaint against him, pending at one time in front of Judge Keller, ought to have been dismissed.
13. As of the date herein, Judge Keller has not divested himself of his interest in 289 College Street Associates since taking the bench, although some inquiries and negotiations have occurred with interested buyers of the entire building.

#### Findings Regarding Violation of Judicial Canons

14. Under Canon 4D(3), a judge is prohibited from serving as a general partner in "any business entity," except under specific circumstances not applicable here. Judge Keller's involvement in 289 College Street Associates violates the mandatory terms of Canon 4D(3).
15. Judge Keller's role as general partner in a business that serves as landlord to attorneys who routinely appear in front of him is a violation of Canon 4D(1)(b), which prohibits a judge from engaging in "frequent transactions or continuing business relationships" with attorneys and parties that are likely to appear before him.
16. Judge Keller has not divested himself of his business interest in the many years since taking the bench, in violation of Canon 4D(4).
17. Judge Keller's off-the-record notice to litigants does not comport with the requirements of Canon 3F, and does not cure any violation of Canon 4 in any event.
18. The two individual complaints, Docket No. 09.031 and 09.039, also indicate that ownership in 289 College Street casts reasonable doubt in the minds of litigants regarding Judge Keller's ability to act impartially in matters involving tenant counsel, implicating Canon 4A.

Wherefore, the JCB finds probable cause to believe that Hon. Mark J. Keller has violated Vermont Code of Judicial Conduct Canons 3 and 4 through his ownership of 289 College Street Associates.

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.

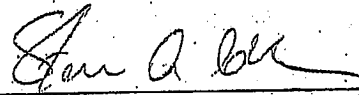
As further detailed in the attached Stipulation, the Vermont Judicial Conduct Board hereby Orders that Judge Mark J. Keller is PUBLICALLY REPRIMANDED based upon his former ownership of rental office space occupied by lawyers who periodically appeared before him. Additionally, Judge Mark J. Keller is 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 16<sup>th</sup> day of February, 2011.

A handwritten signature in dark 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.

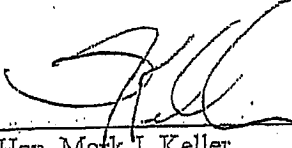
d. Respondent will attend and complete, at his expense, 15 hours of substantive educational seminar(s) acceptable to the mentor judge, that addresses judicial conduct in family court and other potential high-stress court cases. Such seminar(s) shall be attended by Respondent in-person unless other format 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.

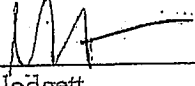
Dated:

2/2/2011

  
Hon. Mark J. Keller

Dated:

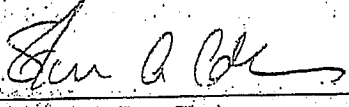
2/4/2011

  
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