

JUDICIAL CONDUCT BOARD

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Chair

November 20, 2012

Closure Report of the Vermont Judicial Conduct Board

Re: Docket No. 12.009

This matter relates to a complaint filed by a judge against an attorney who was a former Chair of the Judicial Conduct Board. The complaint alleges that the Chair violated the Vermont Code of Judicial Conduct in conducting disciplinary proceedings against the judge before the JCB. Specifically, the judge alleges that the Chair was biased, did not allow the judge to be heard, and improperly made public comments about the matter.

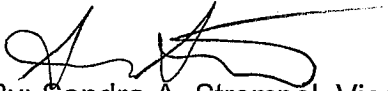
All members of the JCB who were involved in the disciplinary matter against the judge disqualified themselves from reviewing this complaint against the Chair of the JCB. A new panel including pro tempore members was formed pursuant to Rule 6(15) of the Rules of the Supreme Court for Disciplinary Control of Judges. The initial issue which this panel addressed was whether the JCB has jurisdiction to hear a case against one of its own members who is a practicing lawyer. The panel concluded that it did not have jurisdiction to review this complaint because the Chair of the JCB is a lawyer, not a "judge" as defined in Rule 1(1) of the Rules of Supreme Court for Disciplinary Control of Judges (JCB rules) and Administrative Order No. 10, Code of Judicial Conduct, TERMINOLOGY (11). While the definition of a judge set forth in AO 10 Terminology (11) includes officers of the judicial system who perform judicial functions, the panel concluded that judicial function is best understood as the work of the courts, not the work of the JCB.

In making this determination, the panel noted that the JCB is a quasi-judicial body and that no members of other quasi-judicial bodies are subject to JCB regulation. The rules established by the Vermont Supreme Court include clear distinctions among the three types of JCB members; judges, lawyers and lay members. Membership on the JCB does not render all members "judges" subject to the Code of Judicial Conduct. The panel further noted that the various forms of discipline provided for under the JCB rules, such as a deferred sanction involving monitoring of the judge's performance of judicial duties, are not suited to disciplining a part-time layperson or attorney serving on the JCB. The panel also concluded that it lacked jurisdiction to review this complaint

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because there is no indication in the JCB rules that the Board was intended or directed to discipline itself.

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A handwritten signature in black ink, appearing to read 'Sandra A. Stempel', with a long horizontal flourish extending to the right.

By: Sandra A. Stempel, Vice Chair