

# JUDICIAL CONDUCT BOARD

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Steven A. Adler, Esq.  
Chair

September 1, 2015

## Closure Report of the Vermont Judicial Conduct Board Re: Docket No. 13.001

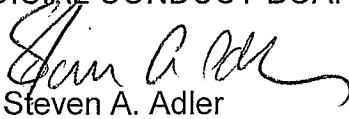
This matter was initiated based on a complaint by Attorney Marsha Meekins relating to Judge Rainville's handling of her client's motion to modify spousal maintenance in the case of Krisinta Greenstein v. Bret Greenstein, Docket No. 827-9-09 Cndm, reversed on appeal, 2012-256 (Feb. of 2013). Ms. Meekins represented Mr. Greenstein in that matter. The complaint alleged that Judge Rainville violated several Canons of the Vermont Code of Judicial Conduct by dismissing her client's motion based on Mr. Greenstein's failure to appear at a hearing held on January 24, 2012.

The Board retained Special Counsel to investigate and prosecute the matter, resulting in a contested hearing.

Pursuant to a Public Reprimand and Disposition Report, Judge Rainville received mentoring and oversight from the Chief Superior Judge Brian J. Grearson and the Honorable Howard E. VanBenthuyzen. Judge Rainville met or exceeded all requirements of the mentoring plan and is hereby discharged from the mentoring requirement.

Attached is the Formal Complaint, Public Reprimand and Final Disposition Report.

JUDICIAL CONDUCT BOARD

  
By: Steven A. Adler

SAA/clh

Attachment: Formal Complaint, Public Reprimand and Final Disposition Report

BEFORE THE JUDICIAL CONDUCT BOARD  
OF THE STATE OF VERMONT

A FORMAL COMPLAINT

Concerning Judge A. Gregory Rainville  
JCB No. 13.001

The Vermont Judicial Conduct Board in accordance with the RULES OF SUPREME COURT FOR DISCIPLINARY CONTROL OF JUDGES, Rule 7(4) hereby files a Formal Complaint against Honorable A. Gregory Rainville.

**A. Facts Supporting Misconduct Charges**

1. In the divorce case that gave rise to the complaint against the Judge (*Greenstein v. Greenstein*; Docket No. 827-9-09 Cndm), at a hearing held on December 15, 2011, the Defendant, the moving party (seeking to modify his spousal support obligation) appeared by telephone. His counsel, Marsha Meekins, Esq. was present in the courtroom as was Ms. Greenstein, the Plaintiff, who appeared *pro se*.
2. There had been one previous hearing in the matter in October at which the judge indicated to the parties that he would review the file and that the December hearing would be on the merits.
3. At the December 15, 2011 hearing, the judge admitted that he had not reviewed the file and that there would not be time to hear the motion on its merits on that date.
4. The Judge utilized the time he had on December 15<sup>th</sup> to flesh out the issues involved. He indicated that both parties would need to establish their respective financial circumstances at the next hearing. The Judge never ordered Mr. Greenstein, who lived and worked in China, to be personally present at the next hearing.

5. Subsequent to the hearing on December 15<sup>th</sup>, the Judge entered his own notes in a "SCHEDULING/ENTRY ORDER", essentially indicating in summary fashion what had occurred at the hearing and what the issues would be at the next hearing. The Judge dated and signed that ENTRY ORDER on the same date as the hearing. This was not sent to the parties.
6. At sometime subsequent to the entry referenced above, the Judge placed an asterisk next to his initial entry and another asterisk at the bottom of the page. The asterisk at the bottom of the page was followed by another entry by the judge stating "D told to be present at merits hearing". This entry was not true.
7. The entry was made sometime in January and subsequent to the judge having reviewed the audio tape of the December 15<sup>th</sup> hearing.
8. On December 21, 2011, the parties were notified that the merits hearing was scheduled for January 24, 2012. The notice did not indicate that Mr. Greenstein was required to personally appear.
9. Counsel for Mr. Greenstein subsequently moved to continue the hearing and indicated in that motion: "DEFENDANT WILL BE IN TRANSIT BACK TO CHINA WHERE HE WORKS ON JANUARY 24<sup>TH</sup>".
10. The motion to continue was denied.
11. When the merits hearing commenced on January 24, 2012, Ms. Meekins appeared but her client was not present. She explained that he was in transit to China and unavailable to participate.
12. Due to Mr. Greenstein's lack of appearance, the judge indicated that the court was considering dismissal on its own motion for failure to prosecute.
13. The hearing went forward and the court admitted Ms. Greenstein's Form 813. However,

the court refused to admit Mr. Greenstein's Form 813 and his income tax return on the ground that he was not present to authenticate them.

14. At the end of the hearing, the court asked the parties to submit memoranda regarding the propriety of dismissal for failure to prosecute. In a written decision issued on January 29, 2012, the court denied Mr. Greenstein's motion to modify and stated, in relevant part:

[t]he court indicated its expectation [husband] would attend the continued merits hearing at the December 15, 2011 [,] hearing, through its December 15, 2011 [,] Entry Order which stated that "[Defendant] told to be present at merits hearing," and implicitly through its denial of his motion to continue. The court finds that [husband] has failed to prosecute this claim and that involuntary dismissal for failure to attend the January 24, 2012 [,] hearing is warranted under V.R.C.P. 41(b)(1).

15. The court went on to cite Mr. Greenstein's failure to meet his burden of proof as another reason for dismissal in that he (husband) failed to "demonstrate his financial circumstances so that the court would be capable of determining a just amount of maintenance".

16. The Vermont Supreme Court reversed this decision stating, in relevant part:

"Where, as here, we cannot be certain that the party dismissed received clear notice of the requirement that formed the basis for dismissal, fairness favors an opportunity to address the underlying issues on the merits."


## **B. Canons Violated**

1. Judge Rainville (hereinafter "Judge") violated Canon 1 of the Vermont Code of Judicial Conduct in that he did not uphold the integrity of the judiciary and participate in maintaining high standards of conduct. This is evidenced by his untrue, self-serving, after-the-fact Entry Order stating that Mr. Greenstein was told to be present at the next hearing.
2. The Judge has violated Canon 2 of the Vermont Code of Judicial Conduct in that he did not avoid impropriety and the appearance of impropriety in all of his activities. He did not act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. (Same reason as No. 1, above. This would not promote public confidence in the impartiality and integrity of the judiciary.)

3. The Judge violated Canon 3 of the Vermont Code of Judicial Conduct in that he did not perform his judicial duties impartially and diligently including both adjudicative and administrative responsibilities. The judge's actions in the false Entry Order violated his administrative and adjudicative responsibilities. In addition, in dismissing Mr. Greenstein's motion and relying upon the false Entry Order in doing so, the judge did not perform his judicial duties impartially and diligently.

**The Respondent has a right to file a written answer within twenty-one days of service, to be represented by counsel, to cross examine witnesses, and to produce evidence on his own behalf.**

DATED AT Middlebury, Vermont this 4<sup>th</sup> day of Dec., 2013.

  
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Robert P. Keiner, Esq.  
Special Counsel to the  
Judicial Conduct Board

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## STATE OF VERMONT BEFORE THE JUDICIAL CONDUCT BOARD

IN RE:  
JUDGE A. GREGORY RAINVILLE

Docket No. 13.001

### PUBLIC REPRIMAND


The Honorable A. Gregory Rainville is hereby publically reprimanded for violating Canons 2 and 3 of the Vermont Code of Judicial Conduct.

Judge Rainville, for a period of 12 months from the date this Order becomes final, and as further detailed in the Disposition Report of the Judicial Conduct Board dated August 25, 2014, shall comply with the following terms and conditions:

1. Develop a mentoring program in consultation with the Chief Administrative Judge.
2. The mentoring program shall include consultation with the mentoring Judge and development of a remedial plan addressing case load management and issuance of timely and properly supported Decisions.

IT IS SO ORDERED this 25 day of August, 2014.

VERMONT JUDICIAL CONDUCT BOARD

By:   
Steven A. Adler, Chair

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## STATE OF VERMONT JUDICIAL CONDUCT BOARD

CONCERNING: JUDGE A. GREGORY RAINVILLE

DOCKET No. 13.001

### DISPOSITION REPORT

Pursuant to Rule 10 of the Rules of Supreme Court for Disciplinary Control of Judges, the Judicial Conduct Board (JCB) issues the following disposition report.

#### **Introduction**

This matter was initiated based on a complaint by Attorney Marsha Meekins relating to Judge Rainville's handling of her client's motion to modify spousal maintenance in the case of Krisinta Greenstein v. Bret Greenstein, Docket No. 827-9-09 Cndm, reversed on appeal, 2012-256 (Feb. of 2013). Ms. Meekins represented Mr. Greenstein in that matter. The complaint alleged that Judge Rainville violated several Canons of the Vermont Code of Judicial Conduct by dismissing her client's motion based on Mr. Greenstein's failure to appear at a hearing held on January 24, 2012.

Ms. Meekins alleged that Judge Rainville should have granted her request for a continuance of the January 24th hearing because her client was expected to be in transit to China at that time. Ms. Meekins further alleged that Judge Rainville's written decision incorrectly stated that her client had been told at the previous hearing on December 15, 2011 that he had to be present at the January 24th hearing. Ms. Meekins' most serious allegation was that Judge Rainville's dismissal decision relied on a December 15, 2011 Entry Order to establish that Mr. Greenstein was told he had to appear at the January 24th hearing. Ms. Meekins alleged that the December 15th entry order was altered by Judge Rainville after the January 24th hearing to falsely state that Mr. Greenstein had been told his presence was necessary.

After an initial investigation, the Board appointed Attorney Robert P. Keiner to serve as Special Counsel to investigate. Attorney Keiner filed a formal complaint on December 4, 2013. Judge Rainville retained Richard I. Rubin as his counsel and an answer was filed on February 5, 2014. The Board held an evidentiary hearing on June 26-27, 2014, with post-hearing memoranda due and filed on July 25, 2014.

## **Canons Alleged to be Violated**

The complaint asserts that Judge Rainville violated Canons 1, 2, and 3 based on the following allegations:

1. He did not uphold the integrity of the judiciary and participate in maintaining high standards of conduct as evidenced by his “untrue, self-serving, after-the-fact Entry Order stating that Mr. Greenstein was told to be present at the next hearing”. (Canon 1).

2. He did not avoid impropriety and the appearance of impropriety in all of his activities and he did not act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary based upon the same factual allegations as the Canon 1 charge. (Canon 2).

3. He did not perform his judicial duties impartially and diligently, including both adjudicative and administrative responsibilities, based on his actions in the “false” Entry Order and in dismissing Mr. Greenstein’s motion and relying upon the “false” Entry Order in so doing. (Canon 3).

## **Burden of Proof**

The parties and the Board agree that the burden of proof on these charges rests with Special Counsel and requires proof by clear and convincing evidence. See Rules for Disciplinary Control of Judges, 10(a).

## **Findings of Fact**

1. After a contested hearing before Judge Patricia Zimmerman, a Final Order was issued in the Krisinta Greenstein v. Bret Greenstein case on November 19, 2010. Based on motions filed by the parties, an Amended Final Order was issued by Judge Zimmerman on January 24, 2011. The amended order was 20 pages and contained detailed findings of fact concerning the financial circumstances of the parties. The orders provide that Ms. Greenstein was entitled to receive spousal maintenance from Mr. Greenstein through March 1, 2015.

2. Paragraph 68 of the Amended Final Order provides that “[i]n the event that the plaintiff cohabitates on a full-time basis or remarries, the defendant may seek a modification of this order to determine if the cohabitation or remarriage has caused an increase in income so that a real and substantial change of circumstances is present.”

3. On June 1, 2011, Mr. Greenstein, through his counsel Marsha Meekins, filed a motion to modify spousal maintenance based on the allegation that Ms. Greenstein was cohabitating with her fiancé on a full-time basis.

4. A hearing on the motion to modify was originally scheduled for July 5, 2011, but was rescheduled several times by Judges Linda Levitt and Matthew Katz at the requests of both parties.



5. Judge Rainville's first involvement in the Greenstein case was on October 11, 2011, the rescheduled date for the hearing on Mr. Greenstein's motion to modify spousal maintenance. Both parties and their attorneys were at the court for the hearing. Although the hearing was scheduled to begin at 11 a.m., Judge Rainville was presiding over other matters at that time and, therefore, a merits hearing did not take place that day. Instead, Judge Rainville held an in-chambers off the record conference with the attorneys during which he indicated the evidentiary hearing would be rescheduled. Counsel requested and Judge Rainville agreed that since he was new to the case and had not yet reviewed the file, he would read the detailed Amended Final Order and the Child Support Order prior to the next hearing. The amended final order set forth the trigger for modification of spousal maintenance and the Child Support Order findings were based on a recent contested hearing.

6. The December 15, 2011 hearing. The merits hearing for the motion to modify was set for December 15, 2011, for one hour. Ms. Greenstein chose to represent herself and she was present at the hearing. Marsha Meekins was also present and her client, Mr. Greenstein, appeared telephonically from China where he was employed and where the Greensteins had previously lived. At the beginning of the hearing, Judge Rainville advised the parties and attorney Meekins that he had not reviewed the file despite his earlier promise due to his heavy case load. Attorney Meekins summarized the basis for her client's motion to modify and Judge Rainville questioned Ms. Greenstein under oath about the cohabitation claim and whether her financial circumstances had changed as a result. Judge Rainville acknowledged the right of Mr. Greenstein to have his attorney cross-examine Ms. Greenstein but there was insufficient time to do so that day and, therefore, he indicated he would schedule another hearing to complete the testimony.

A discussion took place at the December 15th hearing about whether Ms. Greenstein needed to be present in court at the next hearing. Ms. Greenstein stated that she had to travel five hours round trip to appear at the court and she requested to participate in the next hearing by phone. Judge Rainville responded as follows: "Not when--you can't when we're doing exhibits and we have to thumb through pages, you cannot do that by phone. It doesn't work." Ms. Greenstein then asked if her having copies of the exhibits would allow her to participate by phone. Judge Rainville responded: "It is too difficult. The other problem with the phone system is, you can't--if you're talking, you can't hear me if I change directions and ask you a question."

Ms. Greenstein questioned why she had to be present at the next hearing when Mr. Greenstein was permitted to appear by phone that day (12/15/11). Judge Rainville explained that her appearance was necessary because the focus of the hearing was on whether her circumstances had changed. He said it was his understanding that Mr. Greenstein's financial circumstance had not changed since the divorce. Judge Rainville indicated that Ms. Meekins has a right to question Ms. Greenstein about her financial circumstances and that "can't be accomplished well over the phone. It just can't." Judge Rainville later made it clear that Ms. Greenstein's appearance was required: "So you have to come back, because we have to finish the hearing. I don't have any choice about that."

Neither Mr. Greenstein nor Ms. Meekins asked whether or not Mr. Greenstein also needed to appear at the court at the next hearing and this issue was never directly addressed by Judge Rainville. When Judge Rainville indicated the court staff was now scheduling hearings for February, Ms. Greenstein asked if the next hearing could be scheduled when Mr. Greenstein was expected to be back in Vermont. Judge Rainville then stated: "[t]hat would be preferable." Initially, Ms. Meekins argued that it would be a sacrifice for her client to have to attend the hearing while he was in Vermont because that would require him to take time away from his children. Judge Rainville then stated: "He's got a lot at stake" and "[t]hat's worth--that's worth a couple hours of court attendance." Ms. Meekins then indicated that Mr. Greenstein was scheduled to be in Vermont for a week in January and he had no trips planned for February. Judge Rainville said that the hearing would likely take place in February but in response to Ms. Meekins' concerns about delay, Judge Rainville indicated he would do all he could to get the hearing scheduled as soon as possible but this was in the hands of the court manager or staff.

Later in the December 15th hearing, Ms. Greenstein stated that Mr. Greenstein's income had increased since the divorce. Judge Rainville indicated that this put Mr. Greenstein's financial circumstances in issue and he ordered both parties to produce their 2010 tax returns and the tax returns of their domestic partners.

7. On December 21, 2011, a notice of hearing was sent to Ms. Greenstein and Ms. Meekins. The hearing was scheduled for January 24, 2012, at 10 a.m. for two hours. Ms. Meekins closed her office over the holidays and did not see the notice until January 7, 2012. On January 12, 2012, Ms. Meekins filed a motion to continue the hearing. Her motion did not indicate that Mr. Greenstein was unavailable, but she stated there was a scheduling conflict because Mr. Greenstein "will be in transit back to China where he works on January 24th". Ms. Meekins attached a cover letter to her motion which indicated that Mr. Greenstein's "travel plans could not be changed". No travel itinerary or other evidence was submitted in support of the motion to continue.

8. On January 18, 2012, Ms. Greenstein filed a letter with the court indicating that she objected to the motion for a continuance. She noted that the hearing had been scheduled a month earlier and Mr. Greenstein was then in Vermont, scheduled to fly to China the day before the hearing on January 23. Ms. Greenstein also objected to Mr. Greenstein appearing at the hearing telephonically. She stated that at the last hearing Judge Rainville had asked Mr. Greenstein to appear in person at the next hearing. She noted that she had appeared in person at all previous hearings even though she lives 2 1/2 hours away from the court and she was a single mom with two children in school.

9. On January 19, 2012, Judge Rainville denied the motion to continue on the basis that the hearing had been scheduled for two hours and other hearings had been rescheduled. It is unknown when the clerk's office provided the motion to continue to Judge Rainville or if he was provided with Ms. Meekins' cover letter. Whether he was provided with the cover letter or not, Judge Rainville did not recall reading it, and we do not find that he had a duty to do so.

10. Mr. Greenstein did not appear at the January 24, 2012 hearing and he did not attempt to participate telephonically. Ms. Meekins appeared as did Ms. Greenstein. Judge

Rainville questioned Ms. Greenstein about whether or not she was cohabitating with her fiancé on a full-time basis and whether her financial circumstances had changed as a result. Ms. Meekins cross-examined Ms. Greenstein and she had no other witnesses. No request was made for Mr. Greenstein to testify telephonically or at a later date. Ms. Meekins did attempt to introduce into evidence her client's 813 affidavits but that was denied by Judge Rainville on the ground that Mr. Greenstein was not available to authenticate the affidavits. Early in the hearing, Judge Rainville raised the issue *sua sponte* of whether Mr. Greenstein's motion to modify maintenance should be dismissed pursuant to VRCP 41 due to his failure to appear. Ms. Meekins argued that dismissal would be unfair to her client because he was not ordered to attend the merits hearing in person. Near the end of the hearing Ms. Meekins requested time to file a memorandum of law on the issue of dismissal. Judge Rainville allowed both parties the opportunity to file memoranda on this issue.

11. Following the January 24, 2012 hearing, Judge Rainville summarized what took place on a "Scheduling/Entry Order." Courts and judges vary in the use of these orders. Some use them as verbatim docket entries and others use them as a reminder of what took place at a hearing and to provide direction to staff. They are kept in the file and are available for public review. They are sent out to parties only if a judge specifically requests that be done. Judge Rainville noted on the entry order that Mr. Greenstein had failed to appear and he questioned whether Mr. Greenstein had been previously told to be there: "told at last hearing to be present? Review tape".

12. The parties subsequently filed memoranda on the issue of whether the motion to modify should be dismissed due to Mr. Greenstein's failure to appear at the January 24, 2012 hearing. Ms. Meekins also filed a reply memorandum along with a transcript of the December 15th hearing and a request for a hearing pursuant to VRCP 78.

13. At some point following the January 24th hearing, Judge Rainville reviewed the tape of the December 15, 2011 hearing to determine whether or not Mr. Greenstein had indeed been told he needed to be present at the next hearing. Judge Rainville then amended his December 15th "Scheduling/Entry Order" by adding an asterisk and the statement "D [Defendant] told to be present at merits hearing." Judge Rainville neither signed nor dated this addition to the entry order. He testified at the JCB hearing that it was not uncommon for him to write the scheduling/entry orders days or weeks after hearings or to add additional information to the Entry without initialing or dating the addendum. He said he did this "often...20 to 30 per cent [of the time]". Judge Rainville did not request the clerk's office to serve the parties with either the amended December 15th or January 24th scheduling/entry orders, and these orders were not sent to the parties or their attorneys.

14. Judge Rainville requested a Superior Court law clerk to draft a decision dismissing the motion to modify maintenance based on Mr. Greenstein's failure to appear at the January 24, 2012 hearing. Judge Rainville recalled that this law clerk subsequently asked him about the December 15, 2011 Scheduling/Entry Order which contained the amended notation that Mr. Greenstein had been told be present at the merits hearing. Judge Rainville told this law clerk to rely on this scheduling/entry order as a factual basis for the dismissal order. Judge

Rainville testified that he did not read Ms. Meekins' reply memorandum and he could not recall if he was aware of her request for a hearing because these materials were given to the law clerk.

15. On June 29, 2012, Judge Rainville issued a decision and order that dismissed with prejudice Mr. Greenstein's motion to modify maintenance under V.R.C.P. 41(b)(1), based on his failure to appear at the January 24, 2012 hearing. The decision noted that the motion to modify maintenance required examination of the financial circumstances of both parties and that could not have been accomplished because Mr. Greenstein did not appear for the hearing, either in person or telephonically. Judge Rainville also found that even if the motion was not dismissed for failure to prosecute, Mr. Greenstein failed to meet his burden of proof on the motion due to his failure to testify as to his financial circumstances and the inadmissibility of his tax returns and Form 813.

16. On the issue of whether or not Mr. Greenstein had notice that he needed to attend the January 24, 2012 hearing, Judge Rainville's decision stated the following: "Here, the court indicated its expectation the Defendant would attend the continued merits hearing at the December 15, 2011 hearing, through its December 15, 2011 Entry Order which stated that '[Defendant] told to be present at merits hearing,' and implicitly through its denial of his motion to continue."

17. The decision did not state that Mr. Greenstein's attorney had been provided with a copy of the entry order. On that issue, the decision states that "regardless of whether Defendant's attorney was mailed with a copy of the December 15, 2011 entry order, the court expressed its expectation that Defendant would attend the merits hearing on the record at the December 15, 2011 hearing, at which Defendant was present via telephone." The decision further stated that since there was an allegation that Mr. Greenstein's income had increased since the final order, "the court instructed Defendant to attend the next hearing in person, indicating that it would be 'preferable' for Defendant to be physically present rather than for him to attend via telephone and noting that the matter was 'worth a couple hours of court attendance.' In addition, the court's entry order for the hearing stated "[Defendant] told to be present at merits hearing."

18. Judge Rainville acknowledged at the JCB hearing that his dismissal ruling should not have been based on the December 15, 2011 scheduling/entry order because that order was amended after the merits hearing on January 24th, it was not served on the parties and was meant only to be a note to himself about what he thought he said at the December 15th hearing based on his review of the tape. He further acknowledged that he did not read the decision carefully after it was drafted by the superior court law clerk. During questioning by Special Counsel, Judge Rainville recalled that he did not like the way the decision was written but he perceived that he did not have time to fix it. He testified that he did not realize at the time that the decision implied that Mr. Greenstein had received a copy of the entry order prior to the merits hearing and, therefore, he had notice of the requirement that he attend in person. Judge Rainville also acknowledged that the transcript of the hearing showed that he had not directly ordered Mr. Greenstein to appear at the next hearing. However, Judge Rainville testified that he continues to believe that the statements he made at the December 15th hearing should have made it clear to Mr. Greenstein that his presence was required at the next hearing. Judge Rainville noted that

Ms. Greenstein had the clear impression that both she and Mr. Greenstein had to appear at the next hearing because both of their financial circumstances were relevant to the spousal maintenance issue.

19. Mr. Greenstein appealed the dismissal decision to the Vermont Supreme Court. The Court reversed, noting that the dismissal was based on the ground that Mr. Greenstein had defied an order to personally appear at the next hearing and it was not clear "at all" that he had been given notice of such an order. The Vermont Supreme Court stated that there was no evidence that the December 15, 2011 entry order had been sent to Mr. Greenstein or his counsel and the statement on the order that defendant was "told to be present" was not consistent with the transcript of the December 15th hearing which revealed that the court had said only that it was "preferable" for Mr. Greenstein to attend. The Supreme Court also noted that it was not necessary for Mr. Greenstein to be present at the hearing in order to admit his Form 813 financial statements because they were notarized and admissible under VRE 902(8). The court further noted that Mr. Greenstein's tax return could have been admitted because there was no objection by Ms. Greenstein.

20. Ms. Meekins testified that her client incurred approximately \$12,700.00 in legal fees as a result of having to appeal the dismissal order and to have another hearing before a different judge. After the subsequent hearing, Mr. Greenstein's spousal maintenance obligation was reduced based on Ms. Greenstein's improved financial circumstances due to her cohabitation with her fiancé.

#### **FINDINGS ON ALLEGED CANON VIOLATIONS**

The three Canon charges are based on the same factual allegations--the modification of the December 15, 2011 entry order to state that Mr. Greenstein had been "told to be present at merits hearing" and the reliance on that entry order in the dismissal decision for failure to prosecute. None of the facts listed above were disputed in the JCB proceeding. The contested issues pertain to Judge Rainville's intent and whether or not his actions constitute violations of Canons 1-3.

Special Counsel alleges that Judge Rainville committed judicial misconduct by making the "untrue, self-serving, after-the-fact" amendment to the entry order and relying on that amended order to bolster his dismissal decision. Mr. Keiner argued that the statement that Defendant was "told to be present at merits hearing" was false because the transcript of the hearing shows that Mr. Greenstein was never specifically told that he needed to attend the next hearing in person. Judge Rainville testified that this was not a false statement because Mr. Greenstein should have known that his appearance at the merits hearing was necessary based on several statements made during the December 15th hearing. These statements included Judge Rainville explaining to Ms. Greenstein that she needed to attend the hearing in person, rather than by telephone, because her financial circumstances and records had to be examined and this was difficult to do by telephone. These reasons applied equally to Mr. Greenstein because his income was alleged to have increased and, therefore, his financial circumstances were also at issue. The transcript also revealed that Judge Rainville stated that it was "preferable" that the merits hearing be held when Mr. Greenstein was present in Vermont and his attorney indicated

he was expected to be here in January. Judge Rainville subsequently made arrangements with the clerk's office to have the merits hearing scheduled in January when he understood Mr. Greenstein would be here to visit with his children.

At the JCB hearing, Ms. Greenstein testified that it was her understanding, based on the statements made by Judge Rainville at the December 15th hearing, that both she and Mr. Greenstein were required to attend the merits hearing in person. Divorce attorney Priscilla Dubé testified that based on her review of the transcript of the hearing and the denial of Mr. Greenstein's motion to continue, she would have concluded that Mr. Greenstein needed to appear at the merits hearing.

Although Judge Rainville clearly indicated that it was his preference that Mr. Greenstein appear in person at the merits hearing, the statement he added to the December 15th Entry Order that Mr. Greenstein was "told to be present at merits hearing" was not accurate because Judge Rainville did not specifically order Mr. Greenstein to appear at the hearing.

The statement Judge Rainville added to the December 15th entry order would have had no significance to the parties but for the reliance of the entry order in the dismissal order. The inaccurate statement and in combination with Judge Rainville's failure to note on the entry order that it was based on his review of the tape of the December 15th hearing after the merits hearing, led to the issuance of an improper dismissal order and ultimately to this judicial conduct proceeding.

The June 29, 2012 Dismissal Order. The dismissal decision referred to the December 15, 2011 entry order in connection with the issue of whether or not Mr. Greenstein had received notice that his presence at the merits hearing was required:

[T]he court instructed Defendant [at the December 15th hearing] to attend the next hearing in person, indicating that it would be "preferable" for Defendant to be physically present rather than for him to attend via telephone and noting that the matter was "worth a couple hours of court attendance." In addition, the court's entry order for the hearing stated "[Defendant] told to be present at merits hearing." (emphasis added).

The December 15, 2011 entry order was also referenced in the court's conclusion that involuntary dismissal was appropriate because Mr. Greenstein failed to attend the January 24, 2012 hearing: "Here, the court indicated its expectation the Defendant would attend the continued merits hearing at the December 15, 2011 hearing, through its December 15, 2011 Entry Order which stated that '[Defendant] told to be present at merits hearing', and implicitly through its denial of his motion to continue."

It is clear that the amended December 15, 2011 entry order could not have given Mr. Greenstein notice that he was required to attend the merits hearing on January 24, 2012, because Judge Rainville amended the entry order after the merits hearing. Judge Rainville admitted it was improper for him to rely on the amended entry order in his dismissal order. He further

admitted that it was included in the order by the law clerk at the Judge's express direction to rely on it as a factual basis for the decision. Judge Rainville testified that when he reviewed his order dismissing the motion, he "didn't like the way it was written" but signed and issued it anyway due to the time pressure he was under. However, Judge Rainville testified that he never told the law clerk that Mr. Greenstein or his attorney had been served with the entry order and it was not his intent to raise that implication in the decision.

Although we have serious concerns about the actions of Judge Rainville which led to the improper dismissal order, as well as his practice of adding undated amendments to Entry Order forms, we cannot find by clear and convincing evidence that Judge Rainville intentionally made a false amendment to the December 15, 2011 entry order for the purpose of bolstering his dismissal decision. No evidence was introduced to establish why Judge Rainville would intentionally misrepresent what was said at a recorded hearing knowing that this misrepresentation could easily be discovered by a review of the tape of the hearing. Furthermore, the dismissal decision did not assert that Mr. Greenstein or his attorney had been served with the December 15, 2011 entry order, and service prior to the merits hearing would have been necessary to constitute notice to Mr. Greenstein. If the decision had falsely asserted service of the entry order, that would have been a clear indication of intentional misrepresentation. Special Counsel acknowledged that the incorrect amendment to the entry order could have been made intentionally or due to a lack of diligence.

Although the complaint alleges that Judge Rainville's amendment to the December 15, 2011 entry order was "self-serving," no evidence was introduced to establish that he had something to gain personally as a result of the dismissal of Mr. Greenstein's motion. There also was no evidence to suggest that Judge Rainville was biased toward Ms. Greenstein. Rather, Judge Rainville noted that Ms. Greenstein had made the effort to travel 5 hours round trip to attend the hearing and he expressed his concern that Mr. Greenstein, who had the burden of proof, failed to appear or call in for the hearing after his motion to continue had been denied.<sup>1</sup>

No evidence was introduced to establish that Judge Rainville had previously engaged in dishonest conduct. Several attorneys testified at the JCB hearing that Judge Rainville has a reputation for truthfulness and integrity both as a judge and previously as an attorney. Special Counsel acknowledged that Judge Rainville cooperated in this judicial conduct matter by providing a truthful accounting of his actions and by admitting the mistakes he made in handling the Greenstein case.

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<sup>1</sup> Judge Rainville testified that he denied the Motion To Continue because it was filed late, there was no explanation of what was meant by Mr. Greenstein being "in transit" at the time of the merits hearing and because Judge Rainville suspected Mr. Greenstein did not want to appear at the hearing for fear of divulging his financial circumstances. Although it appears that Mr. Greenstein did wish to participate in the hearing (which is why he filed the motion to continue) and he may well have been in flight to China at the time of the scheduled hearing, it was within Judge Rainville's discretion to deny the motion to continue. The motion was filed late and it was not supported with Mr. Greenstein's travel itinerary or an explanation as to why he was unable to change his travel plans to enable him to attend the hearing, or at least participate by telephone. Two Superior Court judges testified at the hearing, Judges Crucitti and Zimmerman, and both indicated they would have denied the motion to continue under these circumstances.

Even though we find that the evidence was insufficient to establish that Judge Rainville engaged in intentional misconduct, his actions led to the improper dismissal of Mr. Greenstein's motion and Mr. Greenstein incurred substantial legal fees as a result. In addition, the improperly based dismissal order created the appearance of impropriety and did not promote public confidence in the integrity of the judicial system.

The evidence established that Judge Rainville made several errors. His amendment to the December 15, 2011 entry order to state that "[Defendant] told to be present at merits hearing" was not accurate. Judge Rainville did not indicate on the order that his amendment was based on his review of the tape of the December 15, 2011 hearing which was done after the merits hearing. By failing to provide that information, the law clerk who drafted the dismissal order may have mistakenly believed that Mr. Greenstein had been explicitly instructed that he needed to be present at the merits hearing. When the law clerk questioned Judge Rainville about the entry order, Judge Rainville told the clerk to rely on the entry order as a factual basis for the decision. Judge Rainville did not provide sufficient information to enable the law clerk to understand the relevance of the entry order. This led to the drafting of the dismissal order which did not state that Mr. Greenstein or his attorney had been served with the December 15, 2011 entry order but the order was cited in support of the finding that Mr. Greenstein had notice that he needed to attend the merits hearing in person. Judge Rainville's final error was that he failed to carefully review and edit the decision before it was issued. Although Judge Rainville admitted he was not happy with the way it was written, he signed and issued it anyway due to what he perceived to be time constraints. However, the decision was issued 5 months after the merits hearing and, therefore, there was ample time for Judge Rainville to prepare an accurately supported decision.

In considering these errors in the context of the judicial conduct Canons, we find the following:

#### CANON 1

The evidence was insufficient to establish by clear and convincing evidence that Judge Rainville violated Canon 1 ("A Judge Shall uphold the Integrity and Independence of the Judiciary"). That Canon is not violated when a judge makes an unintentional false, misleading or deceptive statement; i.e. when a judge makes a mistake. In re Kroger, 167 Vt. 1 (1997). Although the statement added to the December 15th entry order did not accurately represent what was said at the hearing, the evidence was insufficient to establish that Judge Rainville intentionally misrepresented that he had advised Mr. Greenstein he needed to attend the merits hearing.

#### CANONS 2 AND 3

We do find, that by his actions described above, Judge Rainville violated Canons 2 and 3 of the Vermont Code of Judicial Conduct. Canon 2A provides that "A judge should respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Our Code of Judicial Conduct begins with the exhortation that "intrinsic to all sections of this Code are the precepts that Judges, individually



and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system.” Preamble 1. In the underlying case, both parties reasonably expected to appear in Court at an appointed time and have a hearing. The fact that this did not occur once is regrettable but understandable; however a lack of preparedness of the Judge at the rescheduled hearing in December, particularly after expressly promising to be ready, does little to maintain confidence in our legal system. Finally, at the third hearing on Mr. Greenstein’s Motion to Amend, Judge Rainville indicated at the outset that he was considering the most draconian of all options: a dismissal with prejudice of the underlying motion. While public confidence in the judiciary is enhanced with predictable outcomes, arbitrary rulings such as the refusal to admit self authenticating documents, do not promote public confidence in the judiciary.

The Court had before it multiple alternative responses to Mr. Greenstein’s absence from Court on the third hearing, including addressing the merits of the Motion to Modify Spousal Maintenance or figuring out alternatives to allow the testimony of the absent movant to be taken on another date. Most perplexing was the additional notation on the December 15, 2011 Entry Order: “D told to be present at merits hearing.” This was made after Judge Rainville reviewed the tape of the Hearing specifically for that issue: The Hearing tape contained no such command by the Court. These actions cause us to conclude that Judge Rainville violated Canon 2(A) of the Vermont Code of Judicial Conduct.

Canon 3 states that “A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently.” We recognize that this Judicial Conduct matter involves the conduct of Judge Rainville in only one case and that Judges presiding in the Chittenden County Family Court have very busy case loads.<sup>2</sup> However, one of the responsibilities of a judge is to manage his or her docket to achieve the goal of fairly deciding matters before the court. Furthermore, we find that Judge Rainville made not one but several mistakes in the Greenstein case and we are concerned by his admission that it his practice in 20-30% of his cases to make late, undated amendments to his Entry Orders.

We find that Judge Rainville did not act diligently when he failed to adequately prepare for the December 15th hearing, when he added the inaccurate and undated statement to the December 15th scheduling/entry order, and by failing to carefully review his dismissal decision before it was issued.

The lack of diligence in this case led to an improperly issued dismissal order, caused Mr. Greenstein to incur substantial legal fees and did not promote public confidence in the integrity and impartiality of the judiciary.<sup>3</sup>

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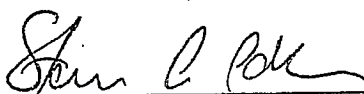
<sup>2</sup> Several judges and lawyers testified at the JCB hearing that the Chittenden Family Court is the busiest court in the state and this renders it challenging for judges to have sufficient and timely court time for the matters before the court.

<sup>3</sup> The improperly based dismissal order may also have been a violation of Canon 3B(7) which requires a judge to accord a litigant the “right to be heard according to law.” However, we note that Mr. Greenstein was aware of the January 24th hearing date and that his motion to continue had been denied. Since he failed to appear in person or telephonically at the hearing, his motion to modify spousal maintenance may have been properly denied due to his failure to meet his burden of proof.

## SANCTIONS

In the Board's judgment, the appropriate sanction for Judge Rainville's violation of Canons 2 and 3 is a public reprimand accompanied by conditions for a period of 12 months. During that one year period, Judge Rainville will be required to participate in a mentoring program with another Judge, overseen by the Chief Administrative Judge. This program will include the development of a plan to assist Judge Rainville in effectively managing his case load and which will also include safeguards to ensure the issuance of timely and properly supported decisions.

Dated: August 25, 2014.



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Steven A. Adler, Esq.

On Behalf of All Members of the Judicial Conduct Board

**Pursuant to Rule 10 of the Rules of Supreme Court for Disciplinary Control of Judges, this is a final order of the Judicial Conduct Board. Rule 12 provides that either party has a right to appeal this Decision to the Vermont Supreme Court pursuant to the Vermont Rules of Appellate Procedure. Any Notice of Appeal shall be filed with the Clerk of the Supreme Court with a copy to the Chair of the Judicial Conduct Board. The Notice of Appeal must be filed within 30 days of the date of the entry of this Order which is August 25, 2014.**