

JUDICIAL CONDUCT BOARD

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STATE OF VERMONT

JUDICIAL CONDUCT BOARD

Docket No. 19.019

In re:
The Honorable Charles Delaney**DISPOSITION REPORT**

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

Introduction

"The primary purpose of judicial discipline is to 'protect the public, ensure the evenhanded administration of justice, and preserve and enhance public confidence in the integrity and fairness of the justice system.'" *In re Balivet*, 2014 VT 41, ¶ 39, 196 Vt. 425 (quoting *In re O'Dea*, 159 Vt. 590 (1993)); accord *In re Kane*, 2017 VT 48, 204 Vt. 635, 635. Accordingly, "the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system" are "[i]nherent in" Vermont's system of regulating judicial conduct and ethics. Vermont Code of Judicial Conduct (2019) ("Code" or "Vermont Code"), Preamble, § [1].

In order to serve this public trust, the Vermont Code requires that "[j]udges should maintain the dignity of judicial office at all times and avoid both impropriety and the appearance of impropriety in their professional and personal lives." *Id.* § [2]; see also *id.* Rule 1.2, cmt. [1] ("Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety."). Critically, "[t]his principle applies to both the professional and personal conduct of a judge." *Id.* Finally, the Code recognizes that, as a result the public trust vested in the judiciary, judges "should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens and must accept the restrictions imposed by the Code." *Id.* cmt. [2].

Under the Code, all judges, including Assistant Judges are held “to an extremely high standard of conduct.” *In re Hill*, 152 Vt. 548, 557 (1989). The Code “imposes stringent standards of behavior on judges precisely because the office carries extraordinary responsibilities,” *In re Boardman*, 2009 VT 42, ¶ 15, 186 Vt. 176 (internal quotation omitted). Therefore, a judge may be sanctioned for conduct even if the judge sincerely believed the conduct to be appropriate and correct. *In re Douglas*, 135 Vt. 585, 593 (1977). Finding a Code violation does not require “bad faith or evil intent.” *In re Kane*, 2017 VT 48, ¶ 1, 204 Vt. 635, 649–50. “Similarly, it is irrelevant ‘whether [the judge] realized any tangible personal benefit or pecuniary gain from the transaction.’” *Id.* (quoting *In re Boardman*, 2009 VT 42, ¶ 15).

This matter commenced when the Board received a complaint dated July 24, 2019 alleging that Assistant Judge Delaney and Assistant Judge Constance Ramsey¹—then Chittenden County’s two Assistant Judges—improperly authorized bonus payments to themselves for work they did to address damage to the Chittenden County courthouse in the wake of a 2017 windstorm. After the Board conducted an initial inquiry under Rule 7(1) of the RSCDCJ, attorney Andrew Snow was appointed as special counsel to investigate the matter further. On August 12, 2021, Attorney Snow filed a formal complaint against Assistant Judge Delaney under Rule 7(4). Assistant Judge Delaney filed an answer to the complaint on September 5, 2021. Attorney Snow and Assistant Judge Delaney filed a set of stipulated facts and exhibits on August 12, 2022, and the Board held a hearing in this matter on August 19, 2022. During the hearing, Attorney Snow appeared as the Board’s special counsel and Assistant Judge Delaney appeared and testified. He represented himself throughout the proceeding.

As explained below, the Board has concluded that Assistant Judge Delaney violated Rules 1.1 and 1.2 of the Code by engaging in conduct that created an appearance of impropriety and that a public reprimand is the appropriate sanction under the circumstances.

Jurisdiction

The Board retains jurisdiction over the allegations alleged in this complaint despite the fact that Assistant Judge Delaney has not served as an Assistant Judge or otherwise as a judge since February 2019. *See* R.S.C.D.C.J. 3(1) (“The Board has continuing jurisdiction over former judges regarding allegations that misconduct occurred during their judicial service if a complaint is made within three years of the discovery of the grounds for the complaint.”). Therefore, the Board retains jurisdiction over this matter, because all relevant facts and allegations occurred during Assistant Judge Delaney’s active service as an Assistant Judge.

¹ The Board and Judge Ramsey reached an agreed-upon resolution of the complaint against her, which resulted in a Stipulated Formal Complaint, Settlement Agreement, and Public Reprimand substantively identical to the one issued in this matter.

Canon/Rules Alleged to have been Violated

The complaint asserts that Assistant Judge Delaney violated Rules 1.1 and 1.2, under Canon 1. Under the Vermont Code, “[t]he Canons state overarching principles of judicial ethics that all judges must observe. Although a judge may be disciplined only for violating a Rule, the Canons provide important guidance in interpreting the Rules.” Code, Scope § [2].

Canon 1 states that “[a] judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.”

The Rules at issue provide as follows:

Rule 1.1: “A judge shall comply with the law, including the Code of Judicial Conduct.”

Rule 1.2: “A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.”

The complaint alleged that Assistant Judge Delaney, by requesting, approving, and taking a bonus payment over and above the compensation to which he was entitled by statute, created an appearance of impropriety and in turn violated the above provisions.

Burden of Proof

For the Board to find a Code violation, it must determine that Assistant Judge Delaney violated the applicable Code provisions by clear and convincing evidence. R.S.C.D.C.J. 10(1); *Balivet*, 2014 VT 41, ¶ 20. “Clear and convincing evidence is a ‘very demanding’ standard, requiring somewhat less than evidence beyond a reasonable doubt, but more than a preponderance of the evidence. [It] does not require that evidence in support of a fact be uncontradicted, but does require that the fact’s existence be ‘highly probable.’” *In re E. T.*, 2004 VT 111, ¶ 12, 177 Vt. 405 (citation omitted).

Findings of Fact

The following facts were established by clear and convincing evidence. Indeed, in large part these findings are drawn directly from the Stipulation to Admit Documentary Exhibits and Stipulated Facts as Evidence at Formal Hearing agreed to and executed by Attorney Snow and Assistant Judge Delaney. The Board appreciates Attorney Snow and Assistant Judge Delaney for their willingness to work together and streamline the proceeding via the Stipulation, and commends them both for the professionalism and collegiality they displayed throughout this process.

1. An Assistant Judge is a “unique Vermont judicial officer” who is elected at the county level and has duties that cover both “limited adjudicative and executive functions” for the county. *In re Boardman*, 2009 VT 42, ¶ 1.
2. There are two Assistant Judges per county in Vermont.
3. Under Vermont Law, an Assistant Judge has adjudicative/judicial duties that include the following:
 - a. To sit on Superior and Family Court proceedings as a finder of facts. 4 V.S.A. §§ 112(b), 457(b).
 - b. To hear and decide small claims actions, 12 V.S.A. § 5540a, judicial bureau matters, 4 V.S.A. § 1108, parentage and child support actions in family court, 4 V.S.A. §§ 461a, 461b, and in probate matters. 4 V.S.A. § 355.
4. Under Vermont Law, an Assistant Judge also has administrative/executive duties that include the following:
 - a. To prepare and approve the budget for their county consistent with statutory requirements. 24 V.S.A. § 133.
 - b. The care and superintendence of the county property, and to “make needed repairs and improvements in and around” the county courthouse, jail, and other county owned buildings. 24 V.S.A. § 131.
 - c. To appoint and set compensation for the County Clerk. 24 V.S.A. §§ 171, 176.
 - d. To appoint the County Treasurer. 24 V.S.A. § 211.
5. Assistant Judge Delaney served as Assistant Judge in Chittenden County at all times relevant to this case, including the time period October 29, 2017, through December 7, 2018.
6. In October 2017, a strong windstorm caused significant damage to the Chittenden County Courthouse and surrounding grounds. Assistant Judges Delaney and Ramsey oversaw and administered the necessary repairs and restorations to the Courthouse. These repairs were completed by November 2018.
7. The work required to repair the damage was extensive, and included replacing six damaged trees, diverting water flow to prevent it from entering the basement, replacing the Main Street walkway, replacing crumbling pavers on the Church Street entrance, and creating a county logo and flag.
8. Assistant Judge Delaney spent considerable time on the Courthouse restoration project, in excess of 150 hours, on tasks including reviewing contractors’ bids, managing contractors’ budgets and workflow, reviewing and processing invoices, and interacting with community members about the project. He did not, however, formally track the time he spent working on the project.
9. The actual costs of the completed Courthouse restoration were less than the amount that had been budgeted.

10. The County budget included funds that could be used to award merit bonuses to County staff.
11. The County policy and procedure for merit bonuses consisted of the following steps:
 - a. The person seeking the bonus (on their own behalf or on behalf of another employee) submits a written request;
 - b. The Assistant Judges review the request and approve or deny it;
 - c. If the Assistant Judges approve the request, then the County Clerk creates a merit bonus check; and
 - d. The County Treasurer signs the merit bonus check.
12. In November 2018, Assistant Judges Delaney and Ramsey submitted a written request for a \$2,000.00 bonus payment to each of them from Chittenden County.
13. The bonus was in addition to and over and above the statutory compensation Assistant Judges Delaney and Ramsey received for their judicial and county administrative functions.
14. Assistant Judge Delaney requested the bonus because of the significant time that he spent working on the Courthouse restoration project and because the project was completed under budget.
15. The Assistant Judges approved both their own and each other's requests for their bonuses, as well as a bonus payment requested by the County Clerk.
16. The bonus was paid to Assistant Judge Delaney on or about December 7, 2018, in addition to his regular compensation for that pay period.
17. Assistant Judge Delaney complied with the County's policy and procedures for requesting disbursements at all times with regards to the Bonus. He did not threaten, coerce, or otherwise pressure anyone in connection with the Bonus, nor did he conceal or otherwise try to hide the fact that he had requested and received the Bonus.

Findings on Alleged Canon Violations

The outcome of this matter turns on whether Assistant Judge Delaney's conduct created an appearance of impropriety within the purview of Rule 1.2. We begin the analysis there.

Rule 1.2 embodies the broad principle that a judge must avoid even the appearance of impropriety. It calls for an objective inquiry: "The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge." Rule 1.2, cmt. [5]. The official commentary to the analogous canon of the federal judicial code fleshes out this definition further: "An appearance of impropriety occurs when reasonable minds, with knowledge of

all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge's honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired." Code of Judicial Conduct for United States Judges, Canon 2A, Commentary.

Here, the facts and circumstances described above raise such a perception. By requesting and approving his own bonus, Assistant Judge Delaney put himself on both sides of the transaction, as both steward and recipient of County funds. And he did so intentionally, not by mistake. *See In re Kroger*, 167 Vt. 1, 6-7 (1997) (unnecessary to conclude judge acted in bad faith or with evil intent in finding Code violation). This in and of itself gives rise to an appearance of impropriety.

Assistant Judge Delaney attempted to defend the bonus by pointing out that his work on the courthouse project and the bonus itself related to his county administrative functions and not his judicial role. However, the Code's prohibition on the appearance of impropriety extends "to both the professional and personal conduct of a judge." Rule 1.2 cmt. [1]. The Commentary's use of the term "professional" (rather than a narrower qualifier, like "judicial" or "administrative") sweeps in Assistant Judge Delaney's work on the Courthouse restoration, along with the rest of his official duties. Indeed, it would be illogical to carve out Assistant Judge Delaney's non-judicial work when the Commentary makes plain that Rule 1.2 extends to *personal* conduct as well. Finally, the Vermont Supreme Court has confirmed that a Rule 1.2 violation can result from an assistant judge's administrative, non-judicial actions. *See In re Boardman*, 2009 VT 42, ¶ 16 (holding that "appearance of impropriety" resulted from "extrajudicial activities" related to a real estate transaction).

Assistant Judge Delaney also argued at hearing that his actions related to the bonus were done transparently, and that none of the other county officials involved—the Clerk or the Treasurer—questioned the transaction. In this regard, the Board wishes to be very clear about what it is *not* finding: We do not find bad faith or culpable intent on Assistant Judge Delaney's part. To the contrary, we credit his testimony that he worked diligently and in good faith on the Courthouse restoration, expending hours well beyond his standard duties for the County. Nor do we find that the bonus he received was excessive or unreasonable in light of the work he performed. Finally, we do not find that he violated any County procedure or policy, that he engaged in coercion or deceit, nor that he attempted to hide, obfuscate, or cover up anything about the bonus process.

But this does not alter the outcome. True, the County Clerk and County Treasurer processed the bonus request in the ordinary course and did not raise questions. However, they had no authority to approve or deny the bonus request, because the power to spend County funds (or decide not to) resides with the Assistant Judges. Further, the Clerk and the Treasurer are appointed by the Assistant Judges. For these reasons, the fact that the Clerk and the Treasurer processed the bonus request simply cannot outweigh the fact that Assistant Judge Delaney cast himself as both recipient and authorizer of the bonus. Moreover, because it is irrelevant "whether [Assistant Judge Delaney] realized any tangible personal benefit or pecuniary gain from the transaction," *In re Boardman*, 2009 VT 42, ¶ 15, that fact that we do not find that the bonus was excessive or unreasonable is of no moment.

We are cognizant that our decision effectively precludes Assistant Judges from receiving bonuses or other compensation (beyond that authorized by statute) when they hold the authority to approve those expenditures. While that outcome may seem harsh, it is correct under the Code, for at least two reasons. First, the Code recognizes that, as a result of the public trust vested in the judiciary, judges “should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens and must accept the restrictions imposed by the Code.” *Id.* cmt. [2]. This case is a textbook application of that principle.

Second, Vermont’s unique county governance structure supports our conclusion. Because Vermont counties have “no generalized governing function, any implication of power with respect to the carrying out of [county] functions . . . must be viewed as correspondingly abridged.” *Town of Stowe v. Lamoille Cty.*, 134 Vt. 402, 406 (1976). “The most cogent circumstance speaking for careful delineation of the authority of county officers relates to county budgets. Unlike towns or the state itself the expenditure of county funds does not have to be authorized by its voters.” *Id.* It is therefore of paramount importance that Assistant Judges, as the exclusive arbiters of county budgets, refrain from approving and authorizing discretionary payments to themselves even where, as here, there is no evidence of bad faith, coercion, cover-up, or evil intent. “To read the situation otherwise is to say that it was the intention of the legislature to give the assistant judges free rein as to the expenditure of county money and the funding of county activities. This is a responsibility so awesome, in view of the thousands of available dollars, that certainly even expansive minded county officials would be reluctant to claim it.” *Id.* at 406-07.

For all of the foregoing reasons, the Board unanimously² concludes that Assistant Judge Delaney created an appearance of impropriety by requesting, authorizing, and accepting the \$2,000.00 bonus payment and thereby violated Rule 1.2. In so doing, he failed to comply with the Code, and for this reason we also conclude that he violated Rule 1.1.

Sanctions

In the Board’s unanimous judgment, the appropriate sanction for the above violations is a public reprimand. A public reprimand is the minimum sanction we may impose in cases involving a formal complaint, because our governing Rules require that we publish the complaint and this decision. *See* R.S.C.D.C.J. 11 (“In any case where a Formal Complaint was filed, the closure report shall consist of copies of the Formal Complaint and any written decision issued by the Board, which shall both be posted on the web site.”). Nonetheless, the public nature of both this decision and the reprimand serves the salutary purposes of informing the public of the outcome and providing easily accessible guidance to all of Vermont’s Assistant Judges as they navigate their dual judicial and administrative roles.

² The entire Board except Board Member Lori Tarrant attended the hearing. Ms. Tarrant was unable to attend the hearing and therefore has recused herself.

We impose the minimum available sanction here for two reasons. First, as noted above, we fully credit Assistant Judge Delaney's testimony that he worked diligently on the courthouse restoration project, followed county procedures in requesting the bonus, and did not engage in any form of coercion or cover-up. In light of his overall good faith, a harsher penalty would be unjustified. Second, it is appropriate, in our judgment, to mete out the same results to Assistant Judges Delaney and Ramsey (who received a public reprimand as a result of the Settlement Agreement between her and the Board). Although Assistant Judge Delaney elected to go to hearing, he operated in good faith throughout the process. As noted above, he worked cooperatively with Attorney Snow to streamline the hearing by stipulating to the key facts and documents.

Dated: September 19, 2022

VERMONT JUDICIAL CONDUCT BOARD

By: 
Barbara R. Blackman, Esq., Chair

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. Under Rule 10(3), the portion of this Order imposing an immediate and permanent suspension from judicial office and the prohibition against holding judicial office in the future shall become final and effective upon further Order of the Vermont Supreme Court. 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 entry of this Order which is October 19, 2022.