

# Wisconsin Supreme Court and Court of Appeals Case Access

## Wisconsin Judicial Commission v. Michael J. Gableman

### Appeal Number 2008AP002458 - J

Supreme Court

#### CASE HISTORY

| Status  | Court | Filing Date     | Anticipated Due Date | Activity                         |
|---|-------|-----------------|----------------------|----------------------------------|
| OCCD  | SC    | 08-13-2010      |                      | Remittitur                       |
| OCCD  | SC    | 07-06-2010      |                      | Letter/Correspondence            |
| OCCD  | SC    | 06-30-2010      |                      | Cites                            |
|   |       | 325 Wis. 2d 631 |                      |                                  |
| OCCD  | SC    | 06-30-2010      |                      | Cites                            |
|   |       | 325 Wis. 2d 579 |                      |                                  |
| OCCD  | SC    | 06-30-2010      |                      | Cites                            |
|   |       | 784 N.W.2d 631  |                      |                                  |
| OCCD  | SC    | 06-30-2010      |                      | Cites                            |
|   |       | 784 N.W.2d 605  |                      |                                  |
| OCCD  | SC    | 06-30-2010      |                      | <a href="#">Opinion/Decision</a> |
| Opinion: Miscellaneous Order  |       |                 |                      |                                  |
| Decision: Other Order Pages: 57   |       |                 |                      |                                  |
| Order Text: Chief Justice Shirley S. Abrahamson, Justice Ann Walsh Bradley and Justice N. Patrick Crooks conclude that by publishing the advertisement at issue, Justice Gableman willfully violated the first sentence of SCR 60.06(3)(c) and engaged in judicial misconduct pursuant to Wis. Stat. 757.81(4)(a). By means of the advertisement that he personally reviewed and checked out, Justice Gableman knowingly or with reckless disregard for the statements' truth or falsity misrepresented a fact concerning an opponent within the meaning of SCR 60.06(3)(c). We further conclude that the rule emphasized in Garrison v. Louisiana and explicitly maintained in cases thereafter is determinative here: False statements knowingly made or false statements made in reckless disregard of their truth or falsity are not protected by the First Amendment. Because SCR 60.06(3)(c) incorporates this standard, its application to judicial discipline in the present case does not violate the First Amendment. It is clear that the court is equally divided regarding the disposition of the matter. No four justices have voted either to accept or to reject the Judicial Conduct Panel's recommendations, nor have four justices agreed on Justice Gableman's motion for summary judgment or any disposition of the Judicial Commission's complaint. No action can therefore be taken on the Panel's recommendation. The Judicial Commission has failed to obtain a majority of justices to reject |       |                 |                      |                                  |

the recommendation of the Panel. Under these circumstances, the Panel is relieved of any further responsibility in this matter, and we remand the matter to the Judicial Commission with directions to request a jury hearing, in accord with Wis. Stat. 757.87, 757.89, and 805.08.

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| OCCD SC   | 06-30-2010 | <a href="#">Opinion/Decision</a> |
| Opinion: Miscellaneous Order<br>Decision: Other Order Pages: 37<br>Order Text: Justice David T. Prosser, Justice Patience Drake Roggensack and Justice Annette Kingland Ziegler agree with the recommendation of the three-judge Judicial Conduct Panel that the Wisconsin Judicial Commission's complaint against Justice Michael J. Gableman must be dismissed.<br>The campaign advertisement that gave rise to the Commission's complaint against Justice Gableman and the governmental rule, SCR 60.06(3)(c), by which the Commission seeks to punish Justice Gableman for that advertisement must be examined under strict scrutiny because that is the standard required by the First Amendment according to the United States Supreme Court. Republican Party of Minnesota v. White, 536 U.S. 765, 788 (2002); Federal Election Comm'n v. Wisconsin Right to Life, Inc., 551 U.S. 449, 469 (2007). Under this standard, truthful statements cannot be punished. All parties agree that the facts are not in dispute and that all of the statements in the advertisement are true. Accordingly, we agree with the Panel that the undisputed facts demonstrate Justice Gableman did not violate SCR 60.06(3)(c). |            |                                  |
| OCCD SC   | 06-30-2010 | Public Domain Citation           |
| Comment: PDC No: 2010 WI 62   |            |                                  |
| OCCD SC   | 06-30-2010 | Public Domain Citation           |
| Comment: PDC No: 2010 WI 61   |            |                                  |
| OCCD SC   | 06-30-2010 | Judicial Comm. Complaint Filed   |
| OCCD SC   | 04-16-2010 | Motion for Miscellaneous Relief  |
| Filed By: Don Millis<br>Submit Date: 4-16-2010<br>Decision: (D) Deny<br>Decision Date: 5-19-2010<br>ORD that the motion is denied as untimely. See Wis. Stat. (Rule) 809.19(7)(c).<br>Abrahamson, C.J., and Crooks, J., dissent.<br>Gableman, J., did not participate.  |            |                                  |
| OCCD SC   | 04-16-2010 | Oral Argument                    |
| OCCD SC   | 03-19-2010 | Motion for Miscellaneous Relief  |
| Filed By: Eric McLeod<br>Submit Date: 3-22-2010<br>Decision: (D) Deny<br>Decision Date: 3-29-2010<br>ORD that the motion for recusal is hereby denied.  |            |                                  |
| OCCD SC   | 02-12-2010 | Assigned-Oral Argument           |
| OCCD SC   | 02-10-2010 | Other Brief                      |

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Filed By: James Alexander

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OCCD SC 01-28-2010

Other Brief  
[Other Brief - Respondent Justice Gableman](#)

Filed By: Eric McLeod

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OCCD SC 01-22-2010

Letter/Correspondence

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OCCD SC 01-21-2010

Letter/Correspondence

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OCCD SC 01-08-2010

Other Brief  
[Other Brief - Wisconsin Judicial Commission](#)

Filed By: James Alexander

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OCCD SC 12-03-2009

Motion to Extend Time

Filed By: James Alexander

Submit Date: 12-3-2009

Decision: (G) Grant

Decision Date: 12-4-2009

ORD that the motion is granted. The brief of the Wisconsin Judicial Commission shall be served and filed on or before January 11, 2010.

Gableman, J., did not participate.

See BOT event due on 1-11-2010

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OCCD SC 12-03-2009

Court Order

IT IS ORDERED that in response to the Panels submission, and pursuant to Wis. Stat. (Rule) 809.19, the complainant, Wisconsin Judicial Commission, shall within 30 days of the date of this order, file a brief in this court or a statement that no brief will be filed; that within 20 days of the date of service of that brief or statement, the respondent, Michael J. Gableman, shall file either a brief or a statement that no brief will be filed; and that if a brief is filed by the respondent, within 10 days of the date of service of that brief, the complainant shall file either a reply brief or a statement that no reply brief will be filed.

Gableman, J., did not participate.

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OCCD SC 11-13-2009

Motion for Miscellaneous Relief

Filed By: Eric McLeod

Submit Date: 11-13-2009

Decision: (O) Other

Decision Date: 6-30-2010

See Decisions Issued

Motion Response

Filed By: James Alexander

Submit Date: 11-24-2009

Motion Response

Filed By: Eric McLeod

Submit Date: 11-30-2009

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OCCD SC 11-12-2009

Report of Judicial Conduct Panel Filed

|   |    |            |                                 |
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| OCCD  | SC | 08-11-2009 | Court Order                     |
| Panels Response to Motion for Summary Judgment. ORAL ARGUMENT scheduled for Wed., September 16, 2009 at 10:00 am in the CA District II courtroom, 2727 N Grandview Blvd, Ste 300, Waukesha WI.  |    |            |                                 |
| OCCD  | SC | 07-08-2009 | Response                        |
| OCCD  | SC | 06-18-2009 | Response                        |
| OCCD  | SC | 05-19-2009 | Court Order                     |
| ORD that the Judicial Commission shall file a response to Justice Gableman's motion for summary judgment within 30 days from the date of this order.<br>FRO that Justice Gableman shall file a reply within 15 days of service of the Commission's memorandum.  |    |            |                                 |
| OCCD  | SC | 05-14-2009 | Response                        |
| OCCD  | SC | 05-11-2009 | Motion for Summary Disposition  |
| Filed By: Eric McLeod<br>Submit Date: 5-12-2009<br>Decision: (O) Other<br>Decision Date: 11-12-2009<br>subm to #59, 35, 37, 38 with panels recommendation<br>Motion Response<br>Filed By: James Alexander<br>Submit Date: 6-18-2009<br>Motion Response<br>Filed By: Eric McLeod<br>Submit Date: 7-9-2009                    |    |            |                                 |
| OCCD  | SC | 05-11-2009 | Response                        |
| OCCD  | SC | 04-30-2009 | Court Order                     |
| ORD that the Judicial Commission's motion to compel is denied.<br>FRO that the Judicial Commission and Justice Gableman file a response to the matters set forth above within 10 days from the date of this order.  |    |            |                                 |
| OCCD  | SC | 04-17-2009 | Motion for Miscellaneous Relief |
| Filed By: James Alexander<br>Submit Date: 4-17-2009<br>Decision: (D) Deny<br>Decision Date: 4-30-2009<br>ORD that the Judicial Commission's motion to compel is denied.<br>FRO that the Judicial Commission and Justice Gableman file a response to the matters set forth above within 10 days from the date of this order. |    |            |                                 |
| OCCD  | SC | 04-16-2009 | Response                        |

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| OCCD SC   | 04-01-2009 | Response                       |
| OCCD SC   | 02-27-2009 | Response                       |
| OCCD SC   | 01-29-2009 | Court Order                    |
| <p>ORD that venue in this matter shall be in Waukesha County.<br/> FRO that the Judicial Commission shall file a Statement of Proposed Facts identifying all facts that the Commission contends are material to the disposition of this matter. The Commission shall file its Statement within 30 days from the date of this order and serve a copy on counsel for Justice Gableman.<br/> FRO that Justice Gableman shall file a Response to the Commission's Statement of Proposed Facts identifying those facts he contends are disputed and proffering any additional facts which he contends are material to the disposition of this matter. Justice Gableman shall file his statement within 30 days from the service of the Commission's Statement and serve a copy on counsel for the Commission.<br/> FRO that the Commission shall file a Reply to Justice Gableman's Response identifying those facts proffered by Justice Gableman that it contends are disputed. The Commission shall file its Reply within 15 days from the service of Justice Gableman's Response and serve a copy on counsel for Justice Gableman.</p> |            |                                |
| OCCD SC   | 01-26-2009 | Response                       |
| OCCD SC   | 01-13-2009 | Court Order                    |
| <p>ORD that the Respondent's counterclaim is dismissed without prejudice.<br/> FRO that the Judicial Commission and Justice Gableman file memoranda addressing the above-described issues within fourteen days from the date of this order.</p>   |            |                                |
| OCCD SC   | 12-15-2008 | Court Order                    |
| <p>ORD that the Hon. Michael J. Gableman file a response to the motion to dismiss on or before January 5, 2009.</p>   |            |                                |
| OCCD SC   | 12-08-2008 | Response                       |
| OCCD SC   | 11-19-2008 | Motion for Pro Hac Vice status |
| <p>Filed By: Eric McLeod<br/> Submit Date: 11-19-2008<br/> Decision: (G) Grant<br/> Decision Date: 11-20-2008<br/> ORD that the motion for pro hac vice admission of Attorneys James Bopp, Jr., and Anita Y. Woudenberg is granted.<br/> FRO that the Judicial Commission shall file a Reply within the time set forth in WIS Stat. 802.06(1)</p>   |            |                                |
| OCCD SC   | 11-19-2008 | Response                       |
| OCCD SC   | 10-30-2008 | Court Order                    |
| <p>ORD that the Honorable Michael J. Gableman shall serve and file an answer to the complaint within 20 days of the date of this order. If no answer is timely filed, application for a default judgment may be made.</p>   |            |                                |
| OCCD SC   | 10-28-2008 | Court Order                    |

# WSCCA Case History

ORD that the Hon. David G. Deininger, Reserve Judge, be assigned to act in case number 08AP2458-J.

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| OCCD SC | 10-28-2008 | Judicial Conduct Panel |
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| OCCD SC | 10-22-2008 | Court Order |
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ORD that the October 22, 2008 order is withdrawn.

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| OCCD SC | 10-22-2008 | Court Order |
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ORD that the Honorable Neal Nettesheim, Reserve Judge, be assigned to act in case number 2008AP2458-J.

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| OCCD SC | 10-20-2008 | Judicial Conduct Panel |
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| OCCD SC | 10-10-2008 | Referral to CA for Appt of Panel |
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| OCCD SC | 10-07-2008 | Judicial Comm. Complaint Filed |
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