IN THE SUPREME COURT
OF THE STATE OF WISCONSIN

In the Matter of Judicial Disciplinary
Proceedings Against the
Honorable Michael J. Gableman

COMPLAINT
Case No._____

Wisconsin Judicial Commission,
Complainant,

v.

The Honorable Michael J. Gableman,
Respondent.

The Wisconsin Judicial Commission by its attorney, James C. Alexander, for its complaint against the Honorable Michael J. Gableman, states as follows:

1. The Wisconsin Judicial Commission ("Commission") is organized under Wis. Stat. §§ 757.81 to 757.99 (2005-06)[1] and is charged with the responsibility of investigating allegations of misconduct by members of the Wisconsin judiciary. Upon a finding of probable cause that a judge has engaged in misconduct, the Commission is required to file a complaint with the Supreme Court.

2. At all times material to this complaint, the Honorable Michael J. Gableman ("Judge Gableman") was a judge of the Burnett County Circuit Court and thus a judge within the meaning of Wis. Stat. § 757.81(3).

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[1] All subsequent references to the Wisconsin Statutes are to the 2005-06 version unless otherwise indicated.

3. At all times material, Judge Gableman was a candidate for the office of Wisconsin Supreme Court Justice and thus a "candidate" for judicial office pursuant to SCR 60.01(2), Wisconsin Code of Judicial Conduct.

4. On April 30, 2008 the Commission notified Judge Gableman that it was investigating allegations of his possible misconduct, and on July 15, 2008 the Commission notified Judge Gableman of the substance of the allegations contained in this Complaint.

5. Judge Gableman responded to the allegations with a written submission on August 14, 2008 and by appearing in person, with counsel, before the Commission on August 21, 2008. These responses were considered by the Commission.

6. The Commission has found probable cause to believe that Judge Gableman willfully violated SCR 60.06(3)(c), Wisconsin Code of Judicial Conduct, which, in relevant part, states that a candidate for judicial office shall not knowingly, or with reckless disregard for the statement's truth or falsity, misrepresent the identity, qualifications, present position, or other fact concerning the candidate or an opponent.

7. On or about March 14, 2008 Judge Gableman published and released a television advertisement ("Advertisement") supporting his candidacy for Justice of the Wisconsin Supreme Court against then incumbent Justice Louis Butler. The audio text of the Advertisement was as follows:

> Unbelievable. Shadowy special interests supporting Louis Butler are attacking Judge Michael Gableman. It's not true!
>
> Judge, District Attorney, Michael Gableman has committed his life to locking up criminals to keep families safe. Putting child molesters behind bars for over 100 years.
>
> Louis Butler worked to put criminals on the street. Like Reuben Lee Mitchell who raped an 11-year-old girl with learning

> disabilities. Butler found a loophole. Mitchell went on to molest another child.
>
> Can Wisconsin families feel safe with Louis Butler on the Supreme Court?

A compact disc of the Advertisement is attached as Exhibit A.

8. The purpose of the Advertisement was to compare and contrast the background, qualifications, and experience of Judge Gableman with the background, qualifications, and experience of Justice Butler.

9. Prior to its publication, Judge Gableman personally reviewed and approved the Advertisement.

10. Louis Butler was an Assistant Public Defender for the State of Wisconsin from 1979 until 1992. In that capacity, Louis Butler represented Reuben Lee Mitchell ("Mitchell") from 1985 to 1988 in Mitchell's appeal of his conviction in circuit court. This is the matter handled by Louis Butler to which the Advertisement referred. In reviewing Mitchell's appeal of his conviction in that case, both the Court of Appeals and the Supreme Court of Wisconsin agreed with Louis Butler's argument that the circuit court had committed error in admitting certain evidence (the "loophole" to which the Advertisement referred). The Supreme Court concluded, however, that the error was not sufficiently prejudicial to have denied Mitchell's right to a fair trial and affirmed his conviction. *State v. Reuben Lee Mitchell*, 139 Wis. 2d 856, 407 N.W.2d 566 (Ct. App. 1987), *reversed*, 144 Wis. 2d 596, 424 N.W.2d 698 (1988). Accordingly, Mitchell remained in prison as sentenced by the circuit court. Mitchell was released on parole in 1992. In 1995 Mitchell was convicted of second-degree sexual assault of a child (the "other child" to which the Advertisement referred).

11. The Advertisement directly implied and was intended to convey the message that action or conduct of Louis Butler enabled or resulted in Mitchell's release and Mitchell's subsequent commission of a criminal molestation. Each of these statements of fact constituting the message is false.

12. Louis Butler did not cause, facilitate, or enable Mitchell's release from prison and had no responsibility for or connection with Mitchell's subsequent commission of a crime.

13. Prior to publication of the Advertisement, Judge Gableman was familiar with the facts and holdings of both the Supreme Court and Court of Appeals decisions cited in paragraph 10 above.

14. At the time Judge Gableman approved and published the Advertisement, he had no reason to believe that Louis Butler had any responsibility for or involvement in Mitchell's release from prison in 1992 or that any action by or work of Louis Butler had anything to do with Mitchell's commission of the subsequent criminal molestation referred to in the Advertisement.

15. The false statements expressed in the Advertisement identified in paragraph 11 related to Louis Butler's background, qualifications, and experience and constitute a misrepresentation of facts. The misrepresentation was made knowingly or with reckless disregard for the truth by Judge Gableman. The publication of the Advertisement therefore constituted a willful violation by Judge Gableman of SCR 60.06(3)(c), Wisconsin Code of Judicial Conduct.

16. By publishing the Advertisement in willful violation of SCR 60.06(3)(c), Judge Gableman engaged in judicial misconduct pursuant to Wis. Stat. § 757.81(4)(a).

WHEREFORE, the Judicial Commission requests that this matter be determined according to law and that appropriate discipline be imposed.

Dated this 7th day of October 2008

Wisconsin Judicial Commission
State of Wisconsin

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