

# SUPREME COURT OF WISCONSIN

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CASE No. : 2012AP566-J

COMPLETE TITLE :

In the Matter of Judicial Disciplinary  
Proceedings Against the Honorable David T.  
Prosser, Jr.

Wisconsin Judicial Commission,  
Complainant,

v.

The Honorable David T. Prosser, Jr.,  
Respondent.

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MEMORANDUM DECISION OF JUSTICE MICHAEL J.  
GABLEMAN

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OPINION FILED: August 10, 2012

SUBMITTED ON BRIEFS:

ORAL ARGUMENT:

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SOURCE OF APPEAL:

COURT:

COUNTY:

JUDGE:

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JUSTICES:

CONCURRED:

DISSENTED:

NOT PARTICIPATING:

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ATTORNEYS:

NOTICE

This opinion is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

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STATE OF WISCONSIN

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**FILED**

**AUG 10, 2012**

Diane M. Fremgen  
Clerk of Supreme Court

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**MEMORANDUM DECISION OF  
JUSTICE MICHAEL J. GABLEMAN**

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Before Michael J. Gableman, J.

¶1 On May 8, 2012, I received a letter from Kevin P. Reak, counsel for Justice David T. Prosser, Jr., filed with the court, requesting that I recuse myself from participation in the captioned matter. Justices Roggensack and Ziegler have issued orders, construing similar letters addressed to them individually as motions for disqualification, and granting those

motions. In re Disciplinary Proceedings Against Prosser, 2012 WI 43, 340 Wis. 2d 292, 813 N.W.2d 208 (Roggensack, J.); In re Disciplinary Proceedings Against Prosser, 2012 WI 103, \_\_\_ Wis. 2d \_\_, \_\_ N.W.2d \_\_ (Ziegler, J.). I wholly agree with the reasoning set forth in Justice Roggensack's and Justice Ziegler's orders and for the same reasons I interpret the May 8, 2012 letter as a motion for disqualification and grant the motion.

¶2 As Justice Ziegler correctly notes, Wisconsin "Supreme [C]ourt justices follow a longstanding practice of recusing themselves without providing an explanation for the recusal." In re Disciplinary Proceedings Against Prosser, 2012 WI 103, ¶1 n.1 (Ziegler, J.). Justices on the United States Supreme Court typically follow the same practice. Sande L. Buhai, Federal Judicial Disqualification: A Behavioral and Quantitative Analysis, 90 Or. L. Rev. 69, 82 (2011).

¶3 Accordingly, for the reasons expressed in Justice Roggensack's and Justice Ziegler's orders, the motion is granted, and I disqualify myself from participation in the matter.