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November 13, 2009

VIA MESSENGER

Mr. David Schanker
Clerk, Wisconsin Supreme Court
110 East Main Street, #215
Madison, WI 53703

RECEIVED

NOV 13 2009

**CLERK OF SUPREME COURT
OF WISCONSIN**

Re: In the Matter of the Disciplinary Proceedings Against the Honorable Michael J. Gableman; Wisconsin Judicial Commission v. The Honorable Michael J. Gableman Case No. 2008AP2458-J

Dear Mr. Schanker:

Enclosed for filing in the above matter please find the original and nine copies of Respondent's Motion to Review Recommendation of the Judicial Conduct Panel on the Basis of the Record in the Judicial Conduct Panel Proceedings.

Please file the original and return a file-stamped copy with the messenger completing this delivery. Thank you for your time and attention to this matter.

Sincerely,

MICHAEL BEST & FRIEDRICH LLP

A handwritten signature in black ink, appearing to read "Eric M. McLeod", is written over a light blue horizontal line.

Eric M. McLeod

EMM:skt

Enclosures

cc: James C. Alexander, Esq.
James R. Bopp, Jr., Esq.

FILED**NOV 13 2009****CLERK OF SUPREME COURT
OF WISCONSIN****IN THE SUPREME COURT
OF THE STATE OF WISCONSIN**

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

Wisconsin Judicial Commission,

Case No. 2008AP2458-J

Complainant,

v.

The Honorable Michael J. Gableman,

Respondent.

**RESPONDENT'S MOTION TO REVIEW RECOMMENDATION
OF THE JUDICIAL CONDUCT PANEL ON THE BASIS OF THE
RECORD IN THE JUDICIAL CONDUCT PANEL PROCEEDINGS**

Respondent, Justice Michael J. Gableman ("Justice Gableman"), by his attorneys, respectfully moves this Court to review the Judicial Conduct Panel's Findings of Fact, Conclusions of Law and Recommendation on the basis of the record established in the proceedings before the Judicial Conduct Panel. In support of this motion, Justice Gableman states as follows:

1. On October 7, 2008, the Wisconsin Judicial Commission ("Judicial Commission") filed this action against Justice Gableman. In its Complaint, the Judicial Commission asserted that Justice Gableman had violated SCR 60.06(3)(c) and, thus, had engaged in judicial misconduct as defined by Wis. Stat. § 757.81(4)(a).

2. On November 19, 2008, Justice Gableman timely filed an Answer and Affirmative Defenses in response to the Judicial Commission's Complaint, in which

Justice Gableman denied that he had violated SCR 60.06(3)(c) and denied that he had engaged in judicial misconduct as defined by Wis. Stat. § 757.81(4)(a).

3. By Order dated October 10, 2008, this Court referred the matter to the Chief Judge of the Wisconsin Court of Appeals for the appointment of a Judicial Conduct Panel (“Judicial Panel”) pursuant to Wis. Stat. § 757.87(3) and for proceedings pursuant to Wis. Stat. § 757.89.

4. By letter to the Judicial Panel, dated January 26, 2009, the parties jointly proposed a procedure to determine what, if any, disputed issues of material fact existed. The Judicial Panel thereafter issued an Order, dated January 29, 2009, adopting the parties’ proposed procedure and directing the parties to submit proposed findings of fact. The Judicial Commission filed a proposed statement of facts on February 27, 2009. Justice Gableman filed a responsive statement of facts on March 31, 2009. The Judicial Commission filed a reply to Justice Gableman’s responsive statement of facts on April 16, 2009.

5. On May 11, 2009, Justice Gableman filed a motion for summary judgment in which he asked the Judicial Panel to recommend dismissal of the Judicial Commission’s Complaint as a matter of law. Justice Gableman’s motion was based on the parties’ factual submissions demonstrating that no factual disputes existed which would preclude disposition of the matter on legal grounds.

6. Justice Gableman’s motion for summary judgment was fully briefed by the parties, and the Judicial Panel held oral argument on the motion on September 16, 2009.

7. On November 12, 2009, the Judicial Panel filed with this Court its Findings of Fact, Conclusions of Law and Recommendation ("Recommendation"). In its Recommendation, the Judicial Panel recommended to this Court that Justice Gableman's motion for summary judgment be granted and that the Judicial Commission's Complaint be dismissed.

8. Justice Gableman hereby requests that this Court review the Recommendation pursuant to Wis. Stat. § 757.91 on the basis of the record established in the proceedings before the Judicial Conduct Panel. As noted above, the issues which form the basis for the Recommendation have been fully briefed by the parties. The Recommendation is also based on a record established before the Judicial Panel. That record is based on the factual submissions of the parties pursuant to a procedure to which the parties stipulated. The Judicial Panel conducted a lengthy oral argument, which is also part of the record. During that oral argument, both parties agreed in response to questions from the Judicial Panel that no disputed issues of material fact existed so as to preclude the final disposition of the matter. (See Recommendation at 6, n. 7)

9. Accordingly, further proceedings in this Court, such as additional briefing and oral argument, are unnecessary. The existing record, including the parties' factual submissions and briefs, and the transcript of the oral argument before the Judicial Panel, are sufficient to allow this Court to conduct its review of the Recommendation. Further proceedings would simply constitute an unnecessary use of judicial resources and additional expense to the parties.

WHEREFORE, Justice Gableman respectfully requests that this Court review the Judicial Panel's Recommendation on the basis of the record established in the proceedings before the Judicial Panel.

Dated this 13th day of November, 2009.

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Attorneys for Respondent

By: 
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State Bar No. 1021730

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