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# Facsimile Transmittal

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MAY 25 2012

CLERK OF SUPREME COURT  
OF WISCONSIN

**To:** Ms. Diane Fremgen, Clerk, **Fax No.:** 608-267-0640  
Wisconsin Supreme Court

**From:** Franklyn Gimbel **Date:** May 25, 2012

**Operator:** Debbie **Client:** Wisconsin Judicial Commission

**CC:** **Client #**

**CC:** **Pages:** 3 including cover page

**Subject:** Wisconsin Judicial Commission  
v. The Honorable David T.  
Prosser, Jr.

**Hard copy:**  will follow  will not follow

Urgent  For Review  Please Comment  Please Reply

### NOTES:

Please see attached correspondence which represents Exhibit 2 to complainant Wisconsin Judicial Commission's motion for designation to panel, which was inadvertently omitted from the motion. I apologize for any inconvenience this omission may have caused. Thank you.

#### CONFIDENTIALITY NOTICE

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# GUNTA & REAK, S.C.

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MAY 25 2012

CLERK OF SUPREME COURT  
OF WISCONSIN

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April 13, 2012

Via Facsimile - (608) 261-8299  
& U.S. Mail

Chief Justice Shirley Abrahamson  
Wisconsin Supreme Court  
110 East Main Street, #215  
P.O. Box 1688  
Madison, Wisconsin 53703-1688

Re: In the Matter of Judicial Disciplinary Proceedings Against the  
Honorable David T. P. Panser, Jr.  
Case No. 12AP566

Dear Chief Justice Abrahamson:

I received your letter dated April 12, 2012 and have the following comments.

First, the statement in your letter that "the case is not yet before the Supreme Court" is not correct. The Commission filed its complaint in the Wisconsin Supreme Court pursuant to Wis. Stat. § 757.85(5). Commission complaints remain in the Supreme Court until they are referred to the Court of Appeals by order of the Supreme Court. These orders are issued after a decision by all participating members of the court. This has been the practice of the Supreme Court for many years. For examples, see 2000AP640-J, 2004AP2954-J, 2007AP2066-J and 2008AP2458-J. I have copies of past referral orders and internal emails discussing them. The Chief Judge of the Court of Appeals has already recognized that he does not have jurisdiction over the case absent a Supreme Court referral order.

Second, Wis. Stat. § 757.19 creates several objective standards disqualifying a judge from participating in "any civil ... action or proceeding." As an eyewitness, a complaining witness, and the subject of one of the issues in dispute, you fall squarely within § 757.19(2) (b) and (f). The statute also provides in subsection (4) that disqualification must occur "when the factors creating such disqualification first become known to the judge."

One purpose of the Respondent's recusal motion is to put you on immediate notice that you are disqualified by law and may not act in any capacity in this case, including participation in the issuance of an order transferring the case to the Court of Appeals.

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APR 13 2012

CLERK OF SUPREME COURT  
OF WISCONSIN

Ex. 2

Chief Justice Shirley Abrahamson  
April 13, 2012  
Page Two

Third, the Respondent's motion is directed to you personally. Its resolution does not depend upon the filing of or decision upon any additional motions. Judges are required to comply with objective recusal standards irrespective of whether they have received a formal recusal motion.

Because you have written extensively on the subject of recusal and have stressed the importance of impartial judges, we hope you will set an example for the judiciary by your prompt withdrawal from this matter.

Very truly yours,

GUNTA & REAK, S.C.



Kevin P. Reak

KPR/jaz

cc: Clerk, Wisconsin Supreme Court (Via Facsimile (608) 267-0640 & U.S. Mail) .  
Frank Gimbel, Esq.  
Honorable Richard Brown  
Honorable David T. Prosser  
Gregg J. Gunta, Esq.