

GUNTA & REAK, S.C.
ATTORNEYS AT LAW9898 West Bluemound Road • Suite 2
Wauwatosa, Wisconsin 53226-4319Gregg J. Gunta
Kevin P. Reak
Ann C. Wirth
John A. Wolfgang**RECEIVED**Telephone (414) 291-7979
Facsimile (414) 291-7960

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CLERK OF SUPREME COURT
OF WISCONSIN

April 17, 2012

Justice Patience Drake Roggensack
Wisconsin Supreme Court
110 East Main Street, #215
P.O. Box 1688
Madison, Wisconsin 53703-1688Re: In the Matter of Judicial Disciplinary Proceedings Against the
Honorable David T. Prosser, Jr.
Case No. 12AP5665-J

Dear Justice Roggensack:

As you know, the Wisconsin Judicial Commission has filed a two-count complaint against Justice David Prosser in the Wisconsin Supreme Court. The complaint will remain in the Supreme Court until the Court issues an order sending the matter to the Chief Judge of the Court of Appeals for the appointment of a three-judge panel. Because the facts of this matter are in dispute, the panel would be expected to conduct an evidentiary hearing equivalent to a trial and then make findings of fact, conclusions of law, and recommendations to the Supreme Court. Wis. Stat. § 757.89.

From my review of Wis. Stat. § 757.19(2), I believe it is clear that you are disqualified by law from sitting as a judge in any part of this matter. You are a "material witness" who was present at events on February 10, 2010, and present at the incident on June 13, 2011. There is near certainty that you would be a fact witness in any evidentiary hearing before the panel and subject to pretrial discovery as well.

Please be advised that Attorney Stephen J. Meyer, in behalf of Justice Prosser, quoted your statement to the Dane County Sheriff's Department in his effort to head off the Commission's unfounded prosecution. The Commission not only disregarded your statement, but also declined to seek any testimony or additional information from you, Justice Ziegler, or Justice Gableman.

The Commission's complaint is not consistent with your statement or the sworn testimony of Justice Prosser. Thus, if the Commission were serious about the complaint, it would have no choice but to attempt to discredit your testimony as well as the testimony of Justices Prosser, Ziegler and Gableman.

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Under the circumstances, I do not see how you could or should sit as a judge in any part of this case, either on the front end issuing an order to the Court of Appeals, or on the back end reviewing your own testimony in relation to any recommendation of the panel. This disqualification of a material witness does not necessarily implicate the fairness or impartiality of the witness, and certainly no such inference should be drawn here.

The objective standards for recusal in Wis. Stat. § 757.19(2)(b) are unequivocal. In view of the statutory mandate, I am writing to request respectfully that you recuse yourself in this matter.

If your decision on recusal is not made now, it will have to be made later. If the decision is made later, the statutory requirement that disqualification must occur "when the factors creating such disqualification first become known to the judge" will have been disregarded. See Wis. Stat. § 757.19(4).

Thank you for your consideration of this request.

Very truly yours,

GUNTA & REAK, S.C.



Kevin P. Reak

KPR/jaz

cc: Clerk, Wisconsin Supreme Court Attn: Carrie (Via Facsimile - (608) 267-0640
Frank Gimbel, Esq.
Honorable Richard Brown
Chief Justice Shirley Abrahamson
Justice Ann Walsh Bradley
Justice Michael J. Gableman
Justice Annette Kingsland Ziegler
Justice David T. Prosser
Gregg J. Gunta, Esq.