



## CITIZEN ACTION OF WISCONSIN

Organizing people to make Wisconsin  
a better place to live and work

March 18, 2008

James Alexander, Executive Director  
Wisconsin Judicial Commission  
110 East Main St. Suite 700  
Madison WI, 53703

RE: Request for Investigation

Dear Mr. Alexander and Commissioners:

Please consider this letter a complaint written on behalf of the members of Citizen Action of Wisconsin, a citizen advocacy group dedicated to bringing transparency to the electoral system.

The Judicial Commission's task is to enforce high standards of judicial behavior, both on and off the bench. The Code of Judicial Conduct contains rules that all Judges must follow. A willful violation of any rule of the Code constitutes misconduct and is subject to sanction.

We want to bring to your attention a matter, which we believe violates Supreme Court Rule 60.06(3)(c). That rule provides:

60.06(3)(c) Misrepresentations. A candidate for a 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***. A candidate for judicial office should not knowingly make representations that, although true, are misleading, or knowingly make statements that are likely to confuse the public with respect to the proper role of judges and lawyers in the American adversary system. (Emphasis added.)

The current race for the Wisconsin Supreme Court seat now held by Justice Louis Butler has been a very contentious one. Facts show that Judge Gableman's recently released ad (released on March 14) violates Judicial Code 60.06(3)(c).

The ad states, "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 onto to molest another child. Can Wisconsin families feel safe with Louis Butler on the Supreme Court?"

The ad knowingly and with reckless disregard misrepresents the facts of the case. It unquestionably implies two things. First that Justice Butler was a judge at the time of this case and second Mr. Mitchell was released due to the actions of Justice Butler. Neither is true.

Louis Butler was a public defender in Milwaukee at the time of this case and represented Mr. Mitchell on appeal. He was in fact, doing what was required of him as a defense attorney, in providing quality representation, a critical component of our system of justice. The case discussed, *State v. Mitchell*, 139 Wis. 2d 856, 407 N.W.2d 566 (Wis. App. 1987), was decided five years before Justice Butler became a municipal judge and a full 17 years before he became a Justice on the state Supreme Court.

Based on the conduct of the trial, the Court of Appeals believed that a new trial was required regarding the admission of certain evidence. However, the Wisconsin Supreme Court did not agree and reinstated the conviction. Mitchell remained behind bars serving the sentence until he was placed on parole. While living in a Milwaukee halfway house, Mr. Mitchell committed a new offense and was sentenced to 40 years in prison. He currently is in a state prison.

The fact is that Justice Butler never put Mr. Mitchell back on the street. To mislead the public otherwise is not truthful.

In addition, the Code of Judicial Conduct 60.03 states that "a judge ... shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Judge Gableman's ad is a negative ad that calls into question the very integrity of the judiciary. By asking voters, "Can Wisconsin families feel safe with Louis Butler on the Supreme Court?" the ad deliberately disparages the judiciary and undermines public confidence in it.

In this regard, the ad is most troubling because it places the face of Justice Louis Butler, an African-American, on a split screen next to the face of Reuben Lee Mitchell, likewise an African-American, both of apparently the same age, both wearing glasses, with both photographs being hard to discern. This split screen is meant to call upon racial prejudice of the voters and is well outside the bounds of ethical judicial conduct.

As such, we ask that the Judicial Commission conduct an investigation regarding the conduct of Judge Gableman and his campaign in putting forward this ad as a violation of Supreme Court Rules 60.06 (3)(c) and 60.03.

We believe it is incumbent upon the Judicial Commission to uphold the Code of Judicial Conduct and make sure all judicial candidates follow the rules. Judge Gableman's ad

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crosses the line and the Judicial Commission needs to investigate to make sure this type of conduct is not allowed to continue.

Sincerely,

James Cavanaugh, President  
Citizen Action of Wisconsin

For more information please contact Robert Kraig, Director of Program, Citizen Action of Wisconsin, (414) 322-5324.