

IN THE SUPREME COURT
OF THE STATE OF WISCONSIN

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.

COMPLAINT

Case No. 12AP566 J

FILED
MAR 16 2012
CLERK OF SUPREME COURT
OF WISCONSIN

Complainant Wisconsin Judicial Commission, by its attorney, Appointed Special Assistant Prosecutor Franklyn M. Gimbel, complains against respondent, The Honorable David T. Prosser, Jr., as follows:

1. The Wisconsin Judicial Commission ("the Commission") is organized under Wis. Stat. §§ 757.81 to 757.99 (2009-10) and is charged with the responsibility of investigating allegations of misconduct by members of the Wisconsin judiciary. Upon a finding of probable cause that a judge has engaged in misconduct, the Commission is required to file a complaint with the Supreme Court.

2. At all times material to this complaint, the Honorable David T. Prosser, Jr. ("Justice Prosser") was a Justice of the Wisconsin Supreme Court, and thus a judge within the meaning of Wis. Stat. §§ 757.81(3), over which the Judicial Commission has jurisdiction and authority to investigate allegations of misconduct.

3. On November 11, 2011, the Commission notified Justice Prosser that it was investigating allegations of his possible misconduct, and on November 11, 2011, the Commission notified Justice Prosser of the substance of the allegations contained in this Complaint.

4. Justice Prosser responded to the allegations with a written submission on December 8, 2011, and by appearing in person, with counsel, before the Commission on December 16, 2011. These responses were considered by the Judicial Commission.

5. The Commission has found probable cause to believe that Justice Prosser willfully violated SCR 60.04(1)(d), Wisconsin Code of Judicial Conduct. This provision, in relevant part, states that a judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity.

6. The Commission has found probable cause to believe that Justice Prosser willfully violated SCR 60.04(1)(o), Wisconsin Code of Judicial Conduct. This provision states that a judge must cooperate with other judges as members of a common judicial system to promote the satisfactory administration of justice.

7. The Commission has found probable cause to believe that Justice Prosser willfully violated SCR 60.02, Wisconsin Code of Judicial Conduct. This provision, in relevant part, states that an independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved.

8. On or about June 13, 2011, Justice Prosser and three fellow Justices entered the chambers of Justice Ann Walsh Bradley.

9. Justice Bradley and Chief Justice Shirley Abrahamson were in Justice Bradley's chambers at that time. A discussion ensued, which rapidly became more heated, as to when the dissenting opinions they were writing would be completed and whether a notice would be released that day, as Justice Prosser and three of his colleagues wanted, regarding a pending matter.

10. Justice Bradley provided information in connection with the investigation of the June 13, 2011 incident, including that at some point during the escalating discussion, she told Justice Prosser to leave her chambers as "it was my intent and my hope when I did that that I was de-escalating the situation."

11. Justice Bradley further indicated that as she was directing Justice Prosser to the door, Justice Prosser "put his hands around my neck, holding my neck as though he were going to choke me."

12. Justice Bradley further indicated that Justice Prosser's hands were around her neck "full circle skin-to-skin."

13. Justice Prosser was questioned on July 8, 2011, by a Dane County Sheriff's Detective about the June 13, 2011 incident, in the presence of his retained legal counsel. Justice Prosser explained the incident by stating that he was approached by Justice Bradley and his hands came up. He added "Did my hands touch her neck, yes I admit that. Did I try to touch her neck, no, absolutely not. It was a total reflex."

14. Justice Bradley did not consent to being touched in any manner by Justice Prosser.

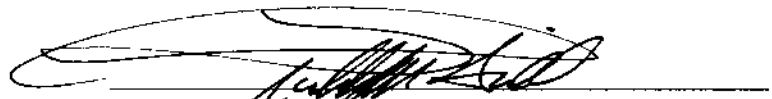
15. Prior to the June 13, 2011 incident described above, Justice Prosser had demonstrated a tendency towards lack of proper decorum and civility by telling the Chief Justice, in the presence of other Justices, that "you are a total bitch."

16. By his conduct, words and behavior, Justice Prosser willfully violated SCR 60.04(1)(d), 60.04(1)(o) and 60.02, and engaged in judicial misconduct pursuant to Wis. Stat. § 757.81(4)(a).

WHEREFORE, the Judicial Commission requests that this matter be determined according to law and that appropriate discipline be imposed.

Dated this 14th of March, 2012.

By Special Prosecutor Appointed By the
Wisconsin Judicial Commission
State of Wisconsin



Franklyn M. Gimbel, Esq.
State Bar No. 1008413
330 East Kilbourn Avenue, Ste. 1170
Milwaukee, Wisconsin 53202
Telephone: 414-271-1440
fgimbel@grgblaw.com