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## Is a Majority of the Wisconsin Supreme Court Corrupt?

**The state Supreme Court's low ethical standards spur reform efforts**

By [Lisa Kaiser](#)



The latest moves of the Wisconsin Supreme Court have so troubled court watchers that a special legislative committee is being launched to focus on reforming the self-policing court.

In the past week, the court has passed permissive rules on campaign contributions—rules that were written by the state's biggest special interests—and deadlocked 3-3 on whether Justice Michael Gableman should be disciplined for running a knowingly false and race-baiting ad in his 2008 campaign.

Chaired by attorney and state Rep. Gary Hebl (D-Sun Prairie), the Special Committee on Judicial Discipline and Recusal will look into whether justices should opt out of cases in which a major campaign contributor or supporter is involved, and whether Supreme Court justices should discipline one of their own.

The committee, not yet formally announced, will include members of the legal profession, lawmakers of both parties and representatives from clean-government organizations. It aims to meet in early August, hold public hearings, and deliver recommendations by October, Hebl said.

“I would like to take politics out of this and work toward solutions that are apolitical and are in the best interests of our courts in the state, to make sure that the public has faith in our judicial system,” Hebl said.

Hebl has support from some members of the state Supreme Court. In a letter to the state Legislature, Justice Patrick Crooks called for a legislative committee to study judicial recusal. And Justice Ann Walsh Bradley, in a sharp critique of the court’s lax ethical standards, wrote: “If this court is unwilling or unable to keep its own house in order, perhaps it will require action by others to step in and assist in maintaining the integrity of the court and preserving the public trust and confidence that Wisconsin judges will be impartial.”

Hebl said he’s open-minded about potential solutions for the court and is waiting to hear from experts before offering recommendations.

“It may very well be that there is no better solution than the one that we have now,” Hebl said.

But state Rep. Fred Kessler (D-Milwaukee), a former circuit court judge who has been invited to join the committee, suggested drafting a constitutional amendment that would change the way Supreme Court justices discipline fellow justices. The current guidelines, found in the state Constitution, allow only justices to reprimand, censure, remove or suspend fellow justices or judges.

Kessler said that asking a justice to discipline a colleague on a collegial court may be impossible.

“I think we have to create, probably through a constitutional amendment, a new body that will discipline members of the Supreme Court who are accused of violating the Judicial Code of Conduct,” Kessler said.

If an amendment is drafted, it would need to be passed by both houses of the state Legislature in two consecutive sessions and then be approved by state voters before it could be added to the Constitution.

### **Judges Can Rule on Campaign Contributors’ Cases**

Why are court watchers so alarmed about ethical standards of justices?

In this term alone, the state Supreme Court has:

- Publicly reprimanded Justice Annette Ziegler for deciding cases as a Washington County circuit court judge that involved West Bend Savings Bank without disclosing that her husband served on the board of the bank. It was the first public reprimand of a sitting Supreme Court justice in the history of the court.

- Split 3-3 on whether Justice Michael Gableman should be disciplined for personally approving and airing a false and race-baiting “Willie Horton”-style ad during his 2008 campaign.

Exonerating Gableman were his conservative allies on the court: David Prosser, Pat Roggensack and Ziegler. Opposing Gableman were Chief Justice Shirley Abrahamson, Bradley and Crooks.

Lacking resolution by the court, the Wisconsin Judicial Commission has dropped the case. In a statement announcing that it would suspend the matter, the commission stated that it felt Gableman violated the state’s Judicial Code of Conduct by airing a false ad: “There is simply no justification for judges or candidates for judicial office to intentionally and purposely misrepresent facts concerning an opponent in a judicial election campaign.”

Gableman’s term expires in 2018.

- Passed new rules that would allow judges at all levels to rule on cases that involved a campaign contributor or an independent party that sponsored “issue ads” in the campaign. The rules were written by two conservative special-interest groups, the Wisconsin Realtors Association and Wisconsin Manufacturers & Commerce (WMC), and approved verbatim 4-3 by the Supreme Court.

Supporting the rule were Gableman, Ziegler, Roggensack and Prosser.

In 2009, critics blasted the court for allowing Ziegler to rule on a case connected to WMC, the big business lobby that spent \$2 million on ads attacking her campaign opponent. Ziegler ruled with Crooks, Prosser and Roggensack and gave a big tax break to the Menasha Corp., which was supported in the case by WMC. The ultimate cost to state taxpayers: an estimated \$350 million in lost sales tax revenue from Menasha and other corporations.

Ziegler could have been asked to remove herself from the case by the opposing party—in this case, Attorney General J.B. Van Hollen, representing the state. But Van Hollen benefited from WMC’s \$2.5 million worth of ads attacking his opponent in 2006 and he did not challenge Ziegler’s participation.

Under the new rules, however, Ziegler’s involvement in the case would not be prohibited.

- Passed a new rule that allows judges at all levels to accept campaign contributions from individuals and parties “even though the contributor may be involved in a proceeding in which the judge, candidate for judicial office, or judge-elect is likely to participate.” The rule was written by the Wisconsin Realtors Association and approved by the Supreme Court without study or revision.

Supporting the rule were Gableman, Ziegler, Roggensack and Prosser. Prosser's term expires in 2011, allowing him to be the first to benefit from the rule if he runs for another term.

- Rejected proposed rules suggested by the League of Women Voters of Wisconsin and retired Justice William Bablitch that would require judges at all levels to recuse themselves from cases in which a campaign contributor or a major independent supporter is involved.
- Split 3-3 on whether Gableman should recuse himself from at least eight criminal cases due to his campaign statements indicating a bias against criminal defendants. Once again, Roggensack, Prosser and Ziegler sided with Gableman. Lacking a majority, Gableman stayed put.

### **Vast Majority of Wisconsinites Believe Cash Creates Bias**

The ethical questions hanging over the current court can lead to an erosion of public trust in the legal system, said Andrea Kaminski, executive director of the League of Women Voters of Wisconsin.

The league proposed one of the recusal rules—rejected by the court in favor of the WMC-written rule—because of a study that showed that 78% of Wisconsinites believed that campaign contributions are likely to bias a judge's decision in a case.

“There's a lack of confidence in the system,” Kaminski said. “We're concerned about the perception of the court. People will feel that they can't take a case to court because they won't get a fair trial.”

An attempt to remove the influence of big money from Supreme Court campaigns was made in the most recent legislative session. The new Impartial Justice law sets up an optional public finance system for Supreme Court candidates and also limits individual donations to Supreme Court candidates to \$1,000 if they do not opt into the public system. But the law does not affect third-party expenditures, which can substantially skew a race toward or away from a judicial candidate.

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