

No. 2007AP2066-J

STATE OF WISCONSIN

IN THE SUPREME COURT

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IN THE MATTER OF JUDICIAL  
DISCIPLINARY PROCEEDINGS AGAINST:

THE HONORABLE ANNETTE K. ZIEGLER.

WISCONSIN JUDICIAL COMMISSION,  
Complainant,

v.

THE HONORABLE ANNETTE K. ZIEGLER,  
Respondent.

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JUDICIAL CONDUCT PANEL'S  
FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND RECOMMENDATIONS

RALPH ADAM FINE  
Presiding Judge, Judicial Conduct Panel

CHARLES P. DYKMAN  
Judge, Judicial Conduct Panel

TED E. WEDEMEYER, JR.  
Judge, Judicial Conduct Panel

## Introduction

As required by WIS. STAT. § 757.89, this Judicial Conduct Panel respectfully submits its findings of fact, conclusions of law, and recommendations in this matter to the supreme court for its review and determination under WIS. STAT. § 757.91.<sup>1</sup>

## Background

On September 6, 2007, the Judicial Commission filed with the supreme court a complaint against the Honorable Annette K. Ziegler, asserting that it had “found probable cause to believe that Judge Ziegler has violated a rule in SCR Chapter 60, Code of Judicial Conduct.”

The Judicial Commission is an agency created by WIS. STAT. § 757.83. The Commission is charged with the responsibility of investigating allegations of judicial misconduct by members of the Wisconsin judiciary. *See* WIS. STAT. § 757.85(1)(a) (“The commission shall investigate any possible misconduct or permanent disability of a judge or circuit or supplemental court commissioner. Misconduct constitutes cause under article VII, section 11, of the constitution.”). Article VII, section 11, of the Wisconsin Constitution provides:

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<sup>1</sup> As material, WIS. STAT. § 757.89 provides that “the panel shall make findings of fact, conclusions of law and recommendations regarding appropriate discipline for misconduct or appropriate action for permanent disability and file the findings, conclusions and recommendations with the supreme court.” As material, WIS. STAT. § 757.91 provides: “The supreme court shall review the findings of fact, conclusions of law and recommendations under s. 757.89 and determine appropriate discipline in cases of misconduct.” We suggest that the supreme court consider giving a judicial conduct panel’s recommendation of appropriate discipline substantial deference when the panel recommends discipline for a supreme court justice. *See In re the Complaint against Seraphim*, 97 Wis. 2d 485, 513, 294 N.W.2d 485, 500 (1980) (“While this court is not bound by the recommendations of the panel, those recommendations are entitled to some deference.”).

Each justice or judge shall be subject to reprimand, censure, suspension, removal for cause or for disability, by the supreme court pursuant to procedures established by the legislature by law. No justice or judge removed for cause shall be eligible for reappointment or temporary service. This section is alternative to, and cumulative with, the methods of removal provided in sections 1 and 13 of this article and section 12 of article XIII.<sup>2</sup>

The Commission's September 6, 2007 Complaint asserted that even though during the time her husband was a paid director of the West Bend Savings Bank, "[f]rom March 1, 2001 to the present, Judge Ziegler has presided over eleven (11) cases in which West Bend Savings Bank was a party to the proceeding."<sup>3</sup>

Contemporaneous with the filing of the September 6 Complaint, Justice Ziegler filed a Response in which she admitted, with explanations, the allegations of the Complaint. The Commission and Justice Ziegler also filed a Stipulation and Joint Recommendation asserting that a reprimand was the appropriate discipline for the judicial misconduct committed by Justice Ziegler.

On September 10, 2007, the supreme court referred this matter to the Chief Judge of the Court of Appeals for the appointment of a Judicial Conduct Panel pursuant to WIS. STAT. § 757.87(3) ("A judicial conduct and permanent

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<sup>2</sup> Article VII, section 1 of the Wisconsin Constitution provides for the impeachment by the Wisconsin Assembly of "all civil officers of this state for corrupt conduct in office, or for crimes and misdemeanors." The Wisconsin Senate is designated as "[t]he court for the trial of impeachments." Article VII, section 13 of the Wisconsin Constitution provides that "[a]ny justice or judge may be removed from office by address of both houses of the legislature." Article XIII, section 12 of the Wisconsin Constitution establishes the procedure for recall of "any incumbent elective officer."

<sup>3</sup> Justice Ziegler assumed her duties on the Wisconsin Supreme Court on August 1, 2007. The Commission alleges that all the matters that are the subject of its complaint against her happened while she was a circuit court judge for Washington County.

disability panel shall consist of either 3 court of appeals judges or 2 court of appeals judges and one reserve judge. Each judge may be selected from any court of appeals district including the potential selection of all judges from the same district. The chief judge of the court of appeals shall select the judges and designate which shall be presiding judge.”).

On September 14, 2007, pursuant to WIS. STAT. § 757.87(3), the Honorable Richard S. Brown, Chief Judge of the Court of Appeals, appointed the Honorable Ralph Adam Fine and the Honorable Ted E. Wedemeyer, Jr., Judges of District 1, Court of Appeals, and the Honorable Charles P. Dykman, Judge of District 4, Court of Appeals, to serve as members of the Judicial Conduct Panel to hear the Commission’s allegations against Justice Ziegler. Judge Fine was appointed presiding judge of the panel.

The panel ordered the parties to address nine questions, set forth in a September 26, 2007 order. The questions were:

1. Media reports have asserted that Judge Ziegler presided over forty-five cases involving West Bend Savings Bank while her husband was a director of the Bank. The Commission and Judge Ziegler shall address whether those reports are true or partially true. If the reports are true, the Commission shall clarify why judicial misconduct was not alleged in connection with those cases and whether those additional cases were considered by the Commission when making its disciplinary recommendation.
2. The Commission and Judge Ziegler do not dispute that Judge Ziegler’s husband was paid for his service as a member of the Bank’s Board of Directors. The record before the Panel, however, is silent as to the details of the compensation. The Commission and Judge Ziegler shall inform the Panel how much Judge Ziegler’s husband received annually from the Bank for his service as a director. The Commission shall tell the Panel whether it knew of the amount of compensation when it agreed to the Stipulation and Joint Recommendation, and if so, whether

the Commission considered that fact when making its disciplinary recommendation.

3. Media reports have asserted that Judge Ziegler's husband owns real estate that is leased to the Bank and, thereby, he earns additional income by virtue of the Bank's tenant relationship with his real estate company. The Commission and Judge Ziegler shall address whether those reports are true. If the reports are true, the Commission and Judge Ziegler shall tell the Panel how much Judge Ziegler's husband's real estate company received on an annual basis from the Bank during the period when Judge Ziegler was involved with the cases that form the basis for the parties' stipulation or the other cases, if any. Additionally, the Commission shall advise the Panel whether it knew of this Bank-related income when it agreed to the Stipulation and Joint Recommendation, and if so, whether the Commission considered that fact when making its disciplinary recommendation.

4. Media reports have stated that Judge Ziegler and her husband have borrowed a substantial amount of money (approximately two million dollars) from the Bank. The Commission and Judge Ziegler shall address whether those reports are true. If the reports are true, the Commission shall tell the Panel whether it knew of the loans when it agreed to the Stipulation and Joint Recommendation; whether it investigated whether the loans were made at arm's length; and whether the Commission considered the loans when making its disciplinary recommendation.

5. Judge Ziegler is required to file a "Statement of Economic Interests" on an annual basis with the Wisconsin Ethics Board. *See* WIS. STAT. §§ 19.43 and 19.44. The Commission and Judge Ziegler shall tell the Panel whether Judge Ziegler disclosed in her annual Statements her husband's status as a director of the Bank; his relationship, if any, as a commercial landlord to the Bank; and the existence of the above-discussed loan, if, in fact, there was such a loan. If those matters are disclosed on Judge Ziegler's annual Statements, the Commission shall tell the Panel how the disclosure affected its assessment of Judge Ziegler's culpability for her failure to recuse herself from cases involving the Bank, as required by SCR 60.04(4)(e)1. If those matters were not disclosed on Judge Ziegler's annual Statements of Economic Interests, or if the disclosures were less than complete, the Commission shall tell the Panel whether it knew of the non-disclosure or incomplete disclosure when it agreed to the Stipulation and

Joint Recommendation, and if so, whether the Commission considered the non-disclosure or incomplete disclosure when making its disciplinary recommendation.

6. The Commission also investigated whether Judge Ziegler violated the Code of Judicial Conduct when she presided over cases involving companies in which she and/or her husband owned stock. The Commission dismissed those allegations, but issued an “expression of concern or warning” in a letter to Judge Ziegler. *See* WIS. ADMIN. CODE § JC 4.08(4).<sup>4</sup> The Commission and Judge Ziegler shall provide the Panel with a copy of the dismissal and warning letter.

7. The Wisconsin Ethics Board conducted an investigation into Judge Ziegler’s conduct and filed a complaint alleging that Judge Ziegler had violated the State’s Code of Ethics. In May, 2007, Judge Ziegler agreed to pay a \$5,000 forfeiture plus attorney’s fees to settle the matter. The Commission and Judge Ziegler shall provide the Panel with a copy of the Ethics Board’s complaint against Judge Ziegler and all settlement documents.

8. During her campaign for the Wisconsin Supreme Court, Judge Ziegler is reported to have denied that she had violated the Code of Judicial Ethics. In the subsequent settlement of the Ethics Board’s complaint and in admissions to the Commission, Judge Ziegler has admitted violations of the Code of Judicial Ethics and judicial misconduct. The Commission and Judge Ziegler shall address whether the timing of Judge Ziegler’s admissions is

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<sup>4</sup> WISCONSIN ADMIN. CODE § JC 4.08(4) authorizes the Commission to

[d]ismiss the matter with such expression of concern or warning as the commission deems appropriate upon finding that there is credible evidence that any of the following exists:

- (a) A violation of one or more standards of the code of judicial ethics that is not aggravated or persistent.
- (b) A violation of a rule of the code of the judicial ethics that is not willful.
- (c) A failure to perform official duties that is not willful or persistent.
- (d) The allegation does not warrant prosecution because of its minor nature or other circumstances.

relevant to the question of what discipline is appropriate for her judicial misconduct.

9. The Commission and Judge Ziegler shall provide the Panel with authority from other jurisdictions that address similar judicial misconduct, for instance, a judge's failure to recuse himself or herself from presiding over cases in which his or her spouse serves on the Board of Directors of a corporate litigant or there are other financial connections between the judge, his or her immediate family, and the litigant (whether or not a corporate litigant). For this case law, the Commission and Judge Ziegler shall provide both the factual background of the misconduct and ultimate discipline imposed for the misconduct.

On October 17, 2007, both parties filed their responses. On November 19, 2007, the panel held a hearing at the Washington County Courthouse. *See* WIS. STAT. § 757.89 ("The hearing shall be held in the county where the judge or circuit or supplemental court commissioner resides unless the presiding judge changes venue for cause shown or unless the parties otherwise agree."). James C. Alexander, Esq., executive director of the Commission argued on its behalf. James R. Troupis, Esq., argued on behalf of Justice Ziegler.

### **Findings of Fact**

Based on the Record, the panel makes the following findings of fact to the requisite clear, satisfactory and convincing burden of proof. *See* WIS. STAT. § 757.89 ("The allegations of the complaint or petition must be proven to a reasonable certainty by evidence that is clear, satisfactory and convincing.").

1. During the time material to the Commission's Complaint, the Honorable Annette K. Ziegler, was a circuit court judge for Washington County, Wisconsin.

2. On April 3, 2007, Justice Ziegler was elected, in a contested election, to a ten-year term on the Wisconsin Supreme Court.
3. Justice Ziegler began her service on the supreme court on August 1, 2007.
4. From March 1, 2001, to the present, Justice Ziegler's husband was and is a paid member of the Board of Directors of West Bend Savings Bank, located in the City of West Bend, Washington County, Wisconsin.
5. Justice Ziegler's husband was and is paid \$20,000 per year for his service as a director.
6. Justice Ziegler's husband's compensation was the same as that paid to other "outside" directors.
7. Justice Ziegler knew that her husband was paid for his services as a director.
8. Justice Ziegler disclosed her husband's position as a director of the Bank on the Statement of Economic Interests that she filed annually with the Wisconsin Ethics Board.
9. Justice Ziegler made no attempt to hide or conceal the fact of her husband's status as a director.
10. The Bank is a mutual savings bank and, as such, it has no shareholders.
11. Justice Ziegler's husband has no financial interest in the Bank.

12. Justice Ziegler's husband viewed his position on the Bank's Board of Directors as a public service to the West Bend community.

13. Justice Ziegler's husband's primary business occupation is a real-estate developer.

14. On November 9, 2006, Justice Ziegler and her husband executed a mortgage on their residence in favor of the Bank, as security for \$2,000,000 in commercial loans extended by the Bank to Justice Ziegler's husband.

15. Justice Ziegler was not involved in obtaining the loans referred to in Finding 14.

16. There is no dispute but that, as asserted in materials submitted to the panel by Justice Ziegler, the loans referred to in Finding 14 were "arm's length" transactions, and that neither Justice Ziegler nor her husband participated in the approval of the loans.

17. Justice Ziegler listed the Bank as a creditor on her Statement of Economic Interests for 2006.

18. A business in which Justice Ziegler's husband was a part-owner rented commercial real estate to the Bank, beginning in late 2006, thereby creating a landlord-tenant relationship between that business and the Bank.

19. Justice Ziegler disclosed the relationship referred to in Finding 18, and the receipt of rental income from the Bank, on her Statement of Economic Interests for 2006. The first rental payment was received after the conclusion of the last of the cases that are the subject of the Commission's Complaint.

20. From March 1, 2001 through the end of her service as a circuit court judge for Washington County, Justice Ziegler presided over eleven cases in which the Bank was a party to the proceeding. Those cases were randomly assigned to Justice Ziegler. In each of the eleven cases, Justice Ziegler took some action.

21. In addition to presiding over those eleven cases, to be discussed in more detail below, forty additional cases involving the Bank were assigned to Justice Ziegler. In those cases, a default judgment was entered by personnel of the Clerk of the Circuit Court's office, using Justice Ziegler's signature stamp. Justice Ziegler did not see the files of those cases or take any personal action in them. Because the default judgments were handled exclusively by Clerk personnel, the Commission determined that there was no willful violation of a rule of the Code of Judicial Ethics in those cases.

22. During the time her husband was a director of the West Bend Savings Bank, Justice Ziegler presided over the following eleven cases, and took action, as described below. Justice Ziegler did not disclose her husband's relationship with the Bank, or obtain a waiver of recusal in any of the cases.<sup>5</sup>

1. ***West Bend Savings Bank v. Lopacinski***, 2006CV045. The Bank filed a Complaint against Scott A. Lopacinski seeking \$45,000. Lopacinski

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<sup>5</sup> SUPREME COURT RULE 60.04(6) provides:

A judge required to recuse himself or herself under sub. (4) may disclose on the record the basis of the judge's recusal and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive recusal. If, following disclosure of any basis for recusal other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the judge should not be required to recuse himself or herself and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

represented himself and, in his Answer, claimed he was the victim of a Nigeria-based computer scam. Lopacinski alleged that he had received a check for \$45,000 from an attorney in Nigeria who asked Lopacinski to send him a wire transfer in that amount. At Lopacinski's request, the Bank sent a wire transfer for \$45,000 to the attorney in Nigeria; however, the check received by Lopacinski was counterfeit and, therefore, it was not honored by the bank on which it was drawn. The Bank moved for summary judgment. Justice Ziegler held a hearing on the motion on May 22, 2006. Lopacinski informed Justice Ziegler that he had no legal defense to the motion. Justice Ziegler granted summary judgment to the Bank, finding, as a matter of law, that no issue of fact was presented. Justice Ziegler signed an Order for Summary Judgment in favor of the Bank for \$46,425, plus attorneys' fees and costs.

2. ***West Bend Savings Bank v. Blackhawk Repossession Investigation and Towing Services, LLC***, 2006CV037. The Bank brought an action to recover \$28,160.33, as the unpaid balance on a loan, and to recover two vehicles that secured the loan. The defendant, without counsel, filed an Answer. The Bank moved for summary judgment. The defendant did not appear at the summary judgment hearing. Justice Ziegler told the clerk to call the defendant at its provided telephone number, but the call was blocked on the receiving end. Justice Ziegler granted summary judgment in favor of the Bank, and signed an Order for Replevin.

3. ***West Bend Savings Bank v. Kidd***, 2006SC844. The nature of this lawsuit is not apparent from this Record. The defendant wrote the court on June 19, 2006 asking that a hearing scheduled for June 26, 2006, be rescheduled. By a message left on an answering machine, the defendant was told to call the court at 1:30 p.m. on June 26, and that she could appear at the hearing by

telephone. On the day of the hearing, the defendant appeared by telephone but the Bank did not appear because it had obtained an adjournment of the hearing from the Clerk's office, without the involvement of Justice Ziegler. The defendant requested a new hearing date, and Justice Ziegler granted that request. All subsequent proceedings in this case were handled by a different judge who entered judgment in favor of the Bank.

4. ***West Bend Savings Bank v. Haugen***, 2005SC089. The Bank sought to recover a vehicle that served as collateral to a loan. A defendant, Eric Haugen, appeared before the Clerk of Circuit Court at a February 14, 2005 hearing. Haugen was not represented by an attorney and he admitted owing the money. Justice Ziegler entered an Order granting possession of the vehicle to the Bank.

5. ***West Bend Savings Bank v. Haugen***, 2005SC789. This case was related to the previous case, No. 2005SC089. On July 5, 2005, Eric Haugen appeared before the Clerk of Circuit Court. The clerk set an adjourned date by which Haugen was to file an answer. A second defendant did not appear, and a default judgment was entered by the clerk, using Justice Ziegler's signature stamp. On July 18, 2005, Eric Haugen appeared, and admitted owing money to the Bank. A judgment for \$5,092.57 was entered on July 19, 2005, by the Clerk of Courts, using Justice Ziegler's signature stamp. A contempt hearing took place on September 12, 2005. Haugen appeared, and the Bank advised Justice Ziegler that Haugen was not in contempt of court. The second defendant, however, did not appear, and Justice Ziegler found the second defendant in contempt of court and ordered that the second defendant spend thirty days in jail; alternatively, the second defendant could purge the contempt by either paying \$5,092.57 or by

submitting a financial disclosure statement. The second defendant submitted the financial disclosure statement, and the contempt was purged.

6. ***West Bend Savings Bank v. Meyer***, 2003SC1360. The Bank filed an action for replevin. At a hearing at which the defendants appeared without counsel, the parties informed Justice Ziegler that a settlement had been reached before the hearing and that the defendants had made arrangements to pay the debt. Upon agreement of the parties, Justice Ziegler signed an Order for Judgment of replevin, and judgment was entered. The Bank agreed not to execute on the judgment so long as the defendants continued to make payments on the loan. The settlement was reached before the hearing and Justice Ziegler was not involved in any settlement discussion.

7. ***West Bend Savings Bank v. Oberdas***, 2003SC172. Prior to the scheduling of any court proceedings, the parties settled the case. The parties filed a signed Stipulation with the Clerk of Circuit Court. The clerk routed the Stipulation to Justice Ziegler who signed the Stipulation. The Stipulation provided that judgment for the Bank could be automatically entered if the defendant did not keep current on loan payments. The Bank later filed an affidavit averring that the defendant had not kept current on the loan, and pursuant to the Stipulation, Justice Ziegler signed an Order for Judgment.

8. ***West Bend Savings Bank v. Volgmann***, 2002CV602. This was a foreclosure action. The defendant appeared by counsel, but did not file an Answer or contest the Complaint. The Bank moved for summary judgment. The defendant's attorney objected in writing, but did not appear at the hearing, and did not otherwise pursue the objection. Justice Ziegler granted summary judgment to the Bank, and entered a Judgment of Foreclosure. The defendant redeemed the

property prior to the foreclosure sale. Four attorneys appeared in the course of this case, and the Bank's request for an adjournment was granted by the Clerk of Courts.

9. ***West Bend Savings Bank v. S. H. Friedenheim***, 2002CV373.

This was a foreclosure action. The principal defendant did not appear. The Bank moved for default judgment and, following a hearing at which only the Bank appeared, Justice Ziegler granted the motion and entered a default judgment in favor of the Bank. During the litigation, Justice Ziegler appointed a senior vice-president of the Bank as receiver for the property. The property was subsequently sold, and Justice Ziegler confirmed the sale. Only the Bank appeared at the confirmation hearing and no one objected to the confirmation of the sale.

10. ***West Bend Savings Bank v. Wright***, 2001SC1468. This was

a replevin action. At a hearing, the defendant appeared without counsel and informed the court that he had not made the payments under the loan and that he did not have a defense to the action. Justice Ziegler signed an Order for Judgment of Replevin.

11. ***West Bend Savings Bank v. McBride***, 2001CV645. This was

a foreclosure action in which the property had been abandoned. The principal defendant did not appear. The attorney for a subordinate defendant filed a notice of appearance, but did not appear at any hearing. The Bank moved for default judgment. Only the Bank appeared at the hearing, and Justice Ziegler granted the motion and entered judgment for the Bank. The property was subsequently sold, and Justice Ziegler confirmed the sale. Only the Bank appeared at the confirmation hearing, and no party objected to the confirmation of the sale.

23. In each of the eleven cases described in Finding 22, Justice Ziegler treated the litigants fairly. No one contended that anything she did was motivated by bias or partiality.

24. Neither Justice Ziegler nor any member of her family benefited from her presiding over the cases described in Finding 22.

25. Neither Justice Ziegler nor any member of her family had any financial interest in the cases described in Finding 22.

26. None of the litigants in the cases described in Finding 22 filed a complaint with the Commission.

27. Justice Ziegler's failure to recuse herself in cases involving the Bank was the subject of extensive media coverage, discussion, and debate during and after the contested election for the supreme court. She was successful in the election, despite extensive publicity associated with the facts we now consider.

28. Despite the extensive publicity over this matter, none of the litigants in the cases described in Finding 22 sought to have them re-opened. *See* WIS. STAT. § 806.07 (reopening of judgments or orders).

29. Justice Ziegler has openly acknowledged her mistake and has apologized publicly for it.

30. When the conflict involving the Bank was brought to her attention in March, 2007, Justice Ziegler immediately took steps to change the case assignment system in Washington County so that cases involving the Bank would no longer be assigned to her.

31. The Wisconsin Ethics Board conducted an investigation into substantially the same conduct that is the subject of the Commission's Complaint.

32. Justice Ziegler did not contest the Report of Investigation filed with the Ethics Board.

33. In the Ethics Board matter, Justice Ziegler agreed that her participation in cases in which the Bank was a party violated WIS. STAT. § 19.46(1)(a).<sup>6</sup>

34. In the Ethics Board matter, Justice Ziegler offered the following explanation for her having sat in cases involving the Bank:

Justice Ziegler stated, in essence, that she simply did not consider that her sitting on cases involving West Bend Savings Bank was a conflict of interests. She stated that the bank "is not how we make our living." She said that her husband is in the development business and if a case came before her involving his business she would know that, but she did not think of the bank as his business. She admitted that the Supreme Court rule was not present to her mind and would not have thought that Chapter 19 of the statutes applied.

35. The Ethics Board found no evidence that Justice Ziegler had used her position to obtain financial gain or any advantage for herself or her family.

36. Justice Ziegler paid a \$5,000 forfeiture, plus costs of approximately \$12,000, to the Ethics Board as a penalty for the violation.

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<sup>6</sup> WISCONSIN STAT. § 19.46(1)(a) prohibits a public official from "[t]ak[ing] any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest."

37. The Commission investigated all allegations of misconduct filed against Justice Ziegler, in addition to the eleven cases described in Finding 22.<sup>7</sup>

38. The Commission's recommendation of a reprimand was not part of any negotiation, prior agreement, or bargain with Justice Ziegler.

39. The Commission presented its position regarding reprimand as the appropriate discipline to Justice Ziegler, who had argued for a lesser penalty.

40. Justice Ziegler decided to enter into a stipulation agreeing with the Commission's recommended discipline of a reprimand.

41. Justice Ziegler cooperated with the Commission in its investigation. Justice Ziegler appeared in person before the Commission on August 23, 2007. She fully and forthrightly answered all of the Commission's questions. Justice Ziegler also provided all of the requested documentation to the Commission.

42. Justice Ziegler did not gain or attempt to gain a financial advantage for either herself or for any member of her family by presiding over the eleven cases described in Finding 22. In each case, she reached the correct legal result. Had Justice Ziegler recused herself from the eleven cases, any judge would have made the same decisions Justice Ziegler made.

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<sup>7</sup> The Commission investigated allegations of misconduct arising from Justice Ziegler's presiding over several cases in which she or her husband owned stock in a corporate party. In a September 6, 2007 letter to Justice Ziegler, the Commission dismissed the allegations with an "expression of warning." A dismissal with warning is a "non-disciplinary disposition of an allegation in which the commission cautions the judge ... not to engage in specified proscribed behavior." WIS. ADMIN. CODE § JC 1.02(8). Additionally, the Commission examined other cases involving the Bank over which Justice Ziegler was alleged to have presided. As noted earlier, in Finding 21, the Commission determined that Justice Ziegler had not, in fact, handled any aspect of those cases, but, rather, they were handled by the office of the Clerk of Courts for Washington County using Justice Ziegler's signature stamp without her knowledge.

43. Justice Ziegler was admitted to the practice of law in May, 1989. She was not the subject of any discipline as an attorney.

44. Justice Ziegler was appointed a circuit court judge on April 21, 1997, elected in 1998 and re-elected in 2004. Before this investigation, Justice Ziegler was not the subject of any judicial discipline or investigation. She violated SCR 60.04(4)(e)1. while she was a circuit court judge and not while a supreme court justice.

45. During her service as a circuit court judge, Justice Ziegler served as the Deputy Chief Judge for the Third Judicial Administrative District.

46. Justice Ziegler has served on the faculty of the Wisconsin Judicial College.

47. Justice Ziegler has served on various committees within the judicial system, including the Criminal Jury Instruction Committee, the Criminal Bench Book Committee, the Judicial Education Committee, the Wisconsin Circuit Court Access Oversight Committee, the Juvenile Justice Advisory Committee, and the Children's Resource Project Coordinating Committee.

48. Justice Ziegler participated in the Judicial Exchange Program in 1999 and participated in several court of appeals cases through that Program.

49. Justice Ziegler has made arrangements with the supreme court commissioners to ensure that no case materials be transmitted to her in any case involving the Bank so long as her husband is serving on the Bank's Board of Directors.

## Conclusions of Law

1. Under Article VII, section 11 of the Wisconsin Constitution, “[e]ach justice or judge shall be subject to reprimand, censure, suspension [or] removal for cause ... by the supreme court pursuant to procedures established by the legislature.”
2. Under section 757.81(4) of the Wisconsin Statutes, “[m]isconduct” includes any of the following: (a) [w]illful violation of a rule of the code of judicial ethics.”
3. Under the Wisconsin Code of Judicial Conduct, “a judge shall recuse himself or herself in a proceeding when the facts and circumstances the judge knows or reasonably should know establish one of the following ... the judge’s spouse ... [i]s a ... director ... of a party.” SCR 60.04(4)(e)1.
4. Under Wisconsin case law, a judge’s volitional act is “willful” if it “did not result from duress or coercion.” *In re Judicial Disciplinary Proceedings against Tesmer*, 219 Wis. 2d 708, 711, 580 N.W.2d 307, 308 (1998) (despite judge’s “good faith belief” that she did not violate the Code of Judicial Conduct, the judge’s permitting a law professor to act as her *pro bono* law clerk was nonetheless willful).
5. Under Wisconsin case law, a judge is presumed to know the provisions of the Code of Judicial Conduct. *Tesmer*, 219 Wis. 2d at 729, 580 N.W.2d at 316 (Judges are “chargeable with the knowledge of the ethical rules governing judges.”).
6. Justice Ziegler’s presiding over the eleven cases in which the Bank was a party was “willful” as that term is used in WIS. STAT. § 757.81(4)(a). Given

her knowledge of her husband’s relationships with the Bank, red flags of danger were prominently flying. Justice Ziegler did not see them.

7. Justice Ziegler’s presiding over eleven cases in which the Bank was a party was “misconduct” as defined by WIS. STAT. § 757.81(4)(a).

8. Under section 757.91 of the Wisconsin Statutes, “[t]he supreme court shall ... determine appropriate discipline in cases of misconduct.”

9. Under section 757.89 of the Wisconsin Statutes, this panel must send to the supreme court the panel’s “findings of fact, conclusions of law and recommendations regarding appropriate discipline for misconduct.”

10. Under Wisconsin case law, this panel is not bound by the parties’ stipulation or agreement as to either the facts or proposed appropriate discipline. *In re Judicial Disciplinary Proceedings against Breitenbach*, 167 Wis. 2d 102, 120, 482 N.W.2d 52, 59 (1992).

11. The provisions of the Code of Judicial Conduct apply equally to all Wisconsin judges and justices. Accordingly, the fact that Justice Ziegler is a member of the Wisconsin Supreme Court is not relevant under the facts of this proceeding.

### **Recommendation**

In complying with the legislature’s direction in WIS. STAT. § 757.89 that the Judicial Conduct Panel recommend appropriate discipline under WIS. CONST. art. VII, § 11, we do not write on a clean slate because the supreme court has set out with specificity the criteria that must be considered and weighed.

First, “[t]he purpose of judicial discipline is to protect the court system and the public it serves from unacceptable judicial behavior.” *In re Judicial Disciplinary Proceedings against Gorenstein*, 147 Wis. 2d 861, 873, 434 N.W.2d 603, 608 (1989).

Second, the supreme court has made it clear that *punishment* is *not* a permissible consideration. *In re Judicial Disciplinary Proceedings against Crawford*, 2001 WI 96, ¶38, 245 Wis. 2d 373, 392, 629 N.W.2d 1, 10 (“Discipline is not intended to punish the judge.”).

Third, the supreme court has identified the following material discipline-considerations: “The discipline imposed should be determined by the extent that the public needs protection from unacceptable judicial behavior, based upon the seriousness of the judge’s misconduct and the likelihood that it would recur.” *In re Judicial Disciplinary Proceedings against Dreyfus*, 182 Wis. 2d 121, 129, 513 N.W.2d 604, 607 (1994).

Fourth, the discipline must be proportional: “Discipline imposed for judicial misconduct is to be responsive to the gravity of the misconduct—the actual harm or threat of harm it posed to those using our court system and to the system itself.” *In re Judicial Disciplinary Proceedings against Aulik*, 146 Wis. 2d 57, 77, 429 N.W.2d 759, 768 (1988).

We address these considerations in the context of this matter.

1. *Factor One—Protection of Our System of Justice and the Public it Serves.*

There is no doubt but that what Justice Ziegler did was wrong, and there is also no doubt that she should have known better because, as we have seen,

all judges are presumed to know the law, including the ethical restraints that govern their conduct. As we have seen from her admission to the Ethics Board, the presumption that she knew the applicable ethical code barring her from presiding over any cases involving an entity on whose board of directors her husband served was overridden by her mistaken assumptions that: (1) no such rule existed; and (2) as long as the Bank was not, as she told the Ethics Board, “how we make our living,” she did not have to either disqualify herself from the Bank’s cases or disclose to the parties her husband’s directorship.

That Justice Ziegler was wrong in not recognizing that the Code of Judicial Conduct required her to either recuse herself from cases involving the Bank or notify the parties of her husband’s directorship does not end our inquiry in connection with the first factor. We must consider two things: (1) what discipline will prevent Justice Ziegler from making the same mistake; and (2) what discipline will alert other judges and justices of their need to be vigilant of their responsibilities under the Code, so that, at the very least, no judge or justice will make the mistake Justice Ziegler made? We conclude that in connection with Factor One, reprimand is a sufficient palliative.

First, as we have found, Justice Ziegler is now alert to the dangers of conflicts of interest. She will not repeat what she did in this matter.

Second, we may take judicial notice under WIS. STAT. § 902.01, and the parties have agreed, that this matter has generated extensive publicity, both during and in the aftermath of a highly contentious campaign for a seat on the supreme court. Thus, it is fair to conclude that all judges in Wisconsin are alert to their responsibilities under the Code and the dangers of possible conflicts of interest. This is true, and will be true, irrespective of the discipline imposed.

Certainly, no judge or justice would want to expose himself or herself to the public shame of a reprimand; a more severe discipline is not needed to accomplish the goals of Factor One.

2. *Factor Two—Punishment is Not a Permitted Consideration.*

We also take judicial notice that some in our state have called for this panel to recommend, and the supreme court to impose, *punishment*. Indeed, the director of Wisconsin Democracy Campaign, which, according to press reports, filed the complaint against Justice Ziegler with the Commission, *see* Emily Fredrix, *Top Judge Signals Leniency on Ziegler*, THE CAPITAL TIMES, Nov. 20, 2007, at C2, has called for Justice Ziegler’s suspension; *Judges to Decide State Supreme Court Justice’s Penalty for Ethical Violation*, Nov. 19, 2007, available at <http://www.channel3000.com/news/14639913/detail.html>; *Ziegler May Face Court Sanctions*, THE EAGLE HERALD, Sept. 7, 2007, available at <http://www.eagleherald.com/nzie0907.asp>. Further, an editorial in the Wisconsin State Journal opined that the supreme court should “punish [Justice Ziegler] for her troubling mistakes.” *Don’t Go Easy on Ziegler*, WISCONSIN STATE JOURNAL, Nov. 26, 2007, at A10.

In addition to these expressions in the media, some members of the public have attempted to influence members of this panel. Originals of those communications and a log of telephone calls received by the secretary of one of the panel members have been filed in the public Record and copies sent to the parties. None of the members of this panel have responded to those communications. It would be a violation of the Code of Judicial Conduct for us to give any heed to the public clamor, no matter how well-intentioned some of it may be. *See* SCR 60.04(1)(b): “A judge shall be faithful to the law and maintain

professional competence in it. A judge may not be swayed by partisan interests, public clamor or fear of criticism.” It is of no consequence to this panel that this clamor will not diminish.

The fact is, as the supreme court has decreed, punishment is not a permissible consideration in imposing judicial discipline.

3. *Factor Three—Protection of the Public, the Seriousness of the Judge’s Conduct, and the Likelihood that it Will Recur.*

There is no doubt that Justice Ziegler’s lack of awareness of the Code provision preventing her from sitting on cases involving the Bank unless she disclosed her husband’s directorship and the parties voluntarily agreed to have her sit is serious. No one contends that it is not. As we explained, however, in our discussion in connection with Factor One, there is *no* likelihood that Justice Ziegler’s violation of the Code will recur—either by her, or by other judges. Thus, the discipline we recommend will be sufficient to convey to all the seriousness of the violations, but, as we explain in our discussion of the next factor, not so severe as to be a draconian response out of proportion both to the gravity of the conduct and to other cases of judicial discipline. Significantly, neither Justice Ziegler nor any members of her family benefited from her sitting on the Bank’s cases, and, equally significant, despite the extensive publicity surrounding this matter, not one of the litigants in those cases sought to have them re-opened for *any* reason. Though Justice Ziegler violated the Code of Judicial Conduct, she did so without moral culpability, which, were that present, would require a different result.

As with our discussion of Factor One, nothing more severe than the public shame of a reprimand is needed to accomplish the goals of Factor Three.

4. *Factor Four—Proportionality.*

No one disputes that discipline should be proportional to the harm inflicted, to the need to protect the public from similar violations, and to the discipline imposed in other cases. Two cases in particular stand out, and light the path to our recommendation of an appropriate discipline: *Dreyfus* and *In re Judicial Disciplinary Proceedings against Crivello*, 211 Wis. 2d 435, 564 N.W.2d 785 (1997) (Judicial Conduct Panel not used).

*Dreyfus* concerned a judge whose conduct struck at the very heart of the judicial process: honesty. The Commission accused Judge Dreyfus of, and he admitted to: (1) filing false certificates attesting that he was up-to-date in deciding his cases; (2) lying to his chief judge about whether he was up-to-date in deciding his cases; and (3) initially telling the same lie to a Commission investigator. *Dreyfus*, 182 Wis. 2d at 122–126, 128, 513 N.W.2d at 604–606, 607. The certificates were required by SCR 70.36, which directed each circuit court judge to file with the office of the Director of State Courts, within the first ten days of every month, an executed certificate attesting to the decisional status of cases submitted to that judge for decision. *Dreyfus*, 182 Wis. 2d at 123–124 n.3, 513 N.W.2d at 605 n.3.

Although Judge Dreyfus was not charged criminally, the filing of the false certificates and lying to his chief judge and to the Commission investigator appears to be within the scope of WIS. STAT. § 946.12(4), which then and now, makes it a felony for “[a]ny public officer or public employee ... in the officer’s or employee’s capacity as such officer or employee, [to] make[] an entry in an account or record book or return, certificate, report or statement which in a material respect the officer or employee intentionally falsifies.” Equally

important, honesty is the very foundation of our system of justice—witnesses and potential jurors swear oaths to tell the truth. Nevertheless, because Judge Dreyfus had recanted his lies to the Commission investigator within one week of making them, had expressed remorse over what he had done, and had been a hard-working and then a relatively recent circuit court judge, *Dreyfus*, 182 Wis. 2d at 129–130, 513 N.W.2d at 607, the supreme court ordered that Judge Dreyfus be suspended for fifteen days, *id.*, 182 Wis. 2d at 130, 513 N.W.2d at 607–608.

*Crivello* involved a judge who admitted to battering his wife while, apparently, he was drunk. *Crivello*, 211 Wis. 2d at 437, 564 N.W.2d at 787.<sup>8</sup> Recognizing that what Judge Crivello had done was serious, albeit not directly affecting his judicial duties, *id.*, 211 Wis. 2d at 438, 564 N.W.2d at 787, the supreme court imposed a reprimand, *id.*, 211 Wis. 2d at 439, 564 N.W.2d at 787.

*Crivello* and *Dreyfus* are bookends that set the boundaries of appropriate discipline. If a fifteen-day suspension is appropriate for a judge who filed false official certificates directly affecting his judicial business, lied to his chief judge about it, and initially lied to the Commission investigator about it, can anyone adhering to neutral principles unaffected by clamor seriously contend that what Justice Ziegler did here warrants a sanction as harsh or harsher than that imposed in *Dreyfus*? We think not.

Further, although Judge Crivello’s battering of his wife did not directly affect his judicial duties, it indirectly affected those judicial duties because persons who are given the authority to judge others accused of violating the

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<sup>8</sup> Judge Crivello was charged with violating WIS. STAT. § 940.19(1), a misdemeanor. According to the Wisconsin Circuit Court Access web site, the case, Milwaukee County Case No. 1996CM600369, was “Dismissed on Prosecutor’s Motion.”

criminal law must not, themselves, commit crimes. Again, can anyone adhering to neutral principles unaffected by clamor contend that Justice Ziegler's violation warrants more than the reprimand given to Judge Crivello? We think not.

Accordingly, although not bound by the parties' joint recommendation here, *see Breitenbach*, 167 Wis. 2d at 120, 482 N.W.2d at 59, we agree with them that reprimand is an appropriate discipline in this matter.

### **Conclusion**

This Judicial Conduct Panel respectfully submits its findings of fact, conclusions of law, and recommendation in this matter to the supreme court for its review and determination.

Recommended for publication in the official reports.