

STATE OF WISCONSIN JUDICIAL COMMISSION



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CONFIDENTIAL
AND SENT VIA EMAIL

Honorable Janet Protasiewicz
Milwaukee County Circuit Court
janet.protasiewicz@wicourts.gov

Dear Judge Protasiewicz:

At its recent meeting, the Commission considered several complaints alleging that you violated Supreme Court Rule 60.06(3)(b) and other related provisions of the Code of Judicial Conduct as a candidate for Supreme Court justice, by making statements of your personal views concerning several contentious political issues during your campaign, including those you made at a January 9, 2023 candidate forum and during several interviews you gave in December 2022 and January 2023. It also considered claims that you “knowingly or with reckless disregard for the statement’s truth or falsity misrepresent[ed] the identity, qualifications, present position, or other fact concerning [...] an opponent,” in violation of Supreme Court Rule 60.06(3)(c), based upon your campaign video ads entitled, “Choices,” and “Predator,” and various Twitter posts.

Please be advised that the Commission dismissed these complaints without action and that Commission proceedings are confidential pursuant to state law.¹ The matter is now closed.

In reaching its decision, the Commission carefully considered: (1) the statements at issue; (2) the Code of Judicial Conduct’s Preamble and relevant Code provisions, including Supreme Court Rule 60.06(3)(a) and Supreme Court Rule 60.06(3)(c);² (3) the U.S. Supreme Court’s

¹ Commissioners Brash and Ziewacz did not participate in this decision.

² The Commission notes that Supreme Court Rule 60.06(3)(a) states:

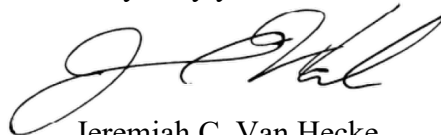
While holding the office of judge or while a candidate for judicial office or a judge-elect, every judge, candidate for judicial office, or judge-elect *should* maintain, in campaign conduct, the dignity appropriate to judicial office and the integrity and independence of the judiciary. A judge, candidate for judicial office, or judge-elect *should not* manifest bias or prejudice inappropriate to the judicial office. Every judge, candidate for judicial office, or judge-elect *should* always bear in mind the need for scrupulous adherence to the rules of fair play while engaged in a campaign for judicial office. *Emphasis added.*

decision in Republican Party of Minnesota v. White, 536 U.S. 765, 788 (2002) (which held that a restriction on an announcement by a candidate for judicial office of his or her views on disputed legal and political issues during a campaign violates the First Amendment); (4) the opinion in Duwe v. Alexander, 490 F. Supp. 2d 968, 976 (W.D. Wis. 2007) (which outlines the distinction between: (a) a promise, pledge or commitment; and (b) an announcement of personal views made during a campaign); and (5) the opinions in In re Gableman, 325 Wis.2d 631, 784 N.W.2d 631 (2010) (Prosser Opinion) and In re Gableman, 325 Wis.2d 579, 784 N.W.2d 605 (2010) (Abrahamson Opinion) (in which the Judicial Conduct Panel and a plurality of the justices held that, although the statements made by the judicial official about his campaign opponent were misleading and implied that past representation of a criminal defendant made that opponent less qualified, the judicial official did not clearly make any factual misrepresentations, and, thus, the statements could not form the basis for discipline).

The Commission also noted that it has not conducted any prior investigations of your conduct or filed any public judicial disciplinary cases against you.

Should you have any questions, please contact me.

Very truly yours,



Jeremiah C. Van Hecke
Executive Director

Supreme Court Rule 60.06(3)(c) states, in part, “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.*

Given their use of the word “should,” neither of these cited Code provisions amounts to “a binding rule under which a judge may be disciplined.” “The use of ‘should’ or ‘should not’ in the rules is intended to encourage or discourage specific conduct and as a statement of what is or is not appropriate conduct.” *See Preamble to Code.*