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IN THE SUPREME COURT
OF THE STATE OF WISCONSIN

CLERK OF SUPREME COURT
OF WISCONSIN

In the Matter of Judicial Disciplinary
Proceedings Against the
Honorable Ellen K. Berz

Wisconsin Judicial Commission,
Complainant,

COMPLAINT

Case No. 24AP2038-J

v.

The Honorable Ellen K. Berz,
Respondent.

The Wisconsin Judicial Commission ("Commission") by its attorney, Jeremiah C. Van Hecke, asserts this complaint against Respondent, the Honorable Ellen K. Berz ("Judge Berz"). Pursuant to Wis. Stat. § 802.06(1) (2021-2022),¹ made applicable to these proceedings by Wis. Stat. § 757.85(7), Judge Berz shall file and serve an answer within 45 days after service of this complaint, or at such time as the appointed three-judge panel shall order.

PARTIES

1. The Wisconsin Judicial Commission is organized under Wis. Stat. §§ 757.81 to 757.99 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

¹ All subsequent references to the Wisconsin Statutes are to the 2021-22 version, unless otherwise indicated.

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 Ellen K. Berz was a judge of the Dane County Circuit Court, and, thus, a judge within the meaning of Wis. Stat. § 757.81(3).

PROBABLE CAUSE FINDINGS

3. After providing Judge Berz with notice of the allegations of misconduct against her and opportunities to be heard concerning the allegations in writing and during a formal appearance before the Commission, the Commission found probable cause to file a complaint against Judge Berz.

4. The Commission has found probable cause that Judge Berz willfully violated Supreme Court Rule 60.02, which, in part, requires judges to personally observe high standards of conduct so that the integrity and independence of the judiciary will be preserved.

5. The Commission has found probable cause that Judge Berz willfully violated Supreme Court Rule 60.03(1), which, in part, requires judges to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

6. The Commission has found probable cause that Judge Berz willfully violated Supreme Court Rule 60.04(1)(d), which requires judges to treat those with whom they deal in an official capacity with patience, dignity and courtesy.

7. The Commission has found probable cause that Judge Berz willfully violated Supreme Court Rule 60.04(1)(e), which requires judges to perform judicial duties without bias or prejudice.

SPECIFIC ALLEGATIONS

INCIDENT ONE

8. Judge Berz presided over a May 31, 2019 hearing in Dane County case no. 17CF2770 (State v. Richard Harrison, Jr.).

9. At the conclusion of the hearing, after previously making several requests for additional time to prepare for trial in his criminal case, the defendant made an additional such request, and the following exchange occurred:

THE COURT: Okay. Thank you. [The last trial date] was October of 2018. Then it was rescheduled to now. And the reason it was rescheduled six months later was to give the defense every opportunity to look into anything they wanted to look into.

I agree with [the prosecutor] that, in all probability, this will turn out to be a ruse. And if it does and if he is convicted at trial, this Court will not forget that. Let's just make that abundantly clear.

The reason I am requiring the State to take a position on the motion to reschedule is because it's really a gamble whether you want to put the child [victim] through a trial and then, if it was exculpatory information that would have probably changed the outcome of the trial, that's how I think it has to be. But if it were that, you'd have to put the child through yet another trial, which, of course, no one would want to do.

I'm going to allow the reschedule.

And just let me make this abundantly clear to you, Mr. Harrison. You're not playing that game anymore after this. It's not a look, I found another rabbit in the hat; look, there might be something underneath this rug. If this trial - - when this trial is rescheduled, we're not playing that game. So play the game with other people you're with. Go to the prison and talk to them about all the games you can play. We're done here. Clear? Mr. Harrison, clear?

THE DEFENDANT: Yeah, your sarcasm is extremely clear.

THE COURT: Good. I thought it would be. That's why I'm saying it to you that way, because I thought you would relate with that.

THE DEFENDANT: I don't.

THE COURT: I think you do.

THE DEFENDANT: I don't.

[DEFENSE COUNSEL]: That's enough.

THE COURT: Now, Mr. [DEFENSE COUNSEL] - -

[PROSECUTOR]: Judge, I'm sorry to interrupt you, but [...].

5.31.19 Harrison Tr., 9 – 11.

10. Judge Berz's conduct, as outlined in paragraphs 8 – 9, constituted willful violations of Supreme Court Rule 60.04(1)(d), which requires judges to treat those with whom they deal in an official capacity, including litigants, with patience, dignity and courtesy.

11. Judge Berz's conduct, as outlined in paragraphs 8 – 9, constituted willful violations of Supreme Court Rule 60.03(1), which, in part, requires judges to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

12. Judge Berz's conduct, as outlined in paragraphs 8 – 9, constituted willful violations of Supreme Court Rule 60.02, which, in part, requires judges to personally observe high standards of conduct so that the integrity and independence of the judiciary will be preserved.

INCIDENT TWO

13. Judge Berz presided over Dane County case no. 20CF2415 (State v. Noah Hodges), which was scheduled for jury selection and a jury trial to take place on December 13, 2021, in Judge Berz's courtroom at the Dane County Courthouse located at 215 S. Hamilton Street, Madison, WI 53703.

14. On the morning of December 13, 2021, the defendant ("Hodges") did not appear in Judge Berz's courtroom for the scheduled proceeding, and Judge Berz was told by Hodges' attorney that Hodges was at a hospital and had been admitted. See 12.13.21 Transcript (State v. Hodges), 2.

15. Judge Berz then directed a staff member to determine Hodges' location, rather than issue a bench warrant (for his non-appearance) or continue the case to a future date.

16. Court staff learned that Hodges was at the American Center Emergency Room in Sun Prairie, Wisconsin. Id. at 3.

17. After obtaining Hodges' location, Judge Berz directed the bailiff, who was responsible for the security of Judge Berz's courtroom, to leave the courthouse in order to arrest the defendant.

18. Judge Berz was informed that a bailiff would not be able to leave the courthouse to arrest Hodges.

19. Judge Berz then told those present in her courtroom that she would retrieve Hodges from the hospital, herself.

20. Judge Berz also stated that, if something happened to her when she went to pick up the defendant, they would hear about it on the news.

21. Judge Berz instructed Hodges' attorney to accompany her and to not inform Hodges that they were on their way to him. The Assistant District Attorney was not present for this interaction.

22. Judge Berz drove from the Dane County Courthouse in her personal vehicle with Hodges' attorney seated in the front passenger seat. The Assistant District Attorney was not present in the judge's vehicle for this trip.

23. Hodges' attorney told the judge that this trip was a bad idea, as the judge is to be the neutral decision maker in the case.

24. Judge Berz told Hodges' attorney that, if she truly thought they should turn around, they would turn around. Hodges' attorney said that they should turn around and Judge Berz turned her vehicle around and returned to the courthouse. At the time Judge Berz turned around, she was headed northeast on East Washington Avenue in Madison (in the direction of the emergency room in Sun Prairie).

25. After returning to her courtroom, Judge Berz recalled the case and stated:

The bailiffs have refused to arrest the defendant, to leave the courthouse in order to do so, so I'm ordering a body-only warrant. Id.

26. Judge Berz's conduct, as outlined in paragraphs 13 - 25, constituted willful violations of Supreme Court Rule 60.04(1)(d), which requires judges to treat those with whom they deal in an official capacity, including lawyers, staff, court officials and others subject to the judge's direction and control, with patience, dignity and courtesy.

27. Judge Berz's conduct, as outlined in paragraphs 13 - 25, constituted willful violations of Supreme Court Rule 60.04(1)(e), which requires judges to perform judicial duties without bias or prejudice.

28. Judge Berz's conduct, as outlined in paragraphs 13 - 25, constituted willful violations of Supreme Court Rule 60.03(1), which, in part, requires judges to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

29. Judge Berz's conduct, as outlined in paragraphs 13 - 25, constituted willful violations of Supreme Court Rule 60.02, which, in part, requires judges to personally observe high standards of conduct so that the integrity and independence of the judiciary will be preserved.

STATUTORY FINDINGS

30. Judge Berz's conduct, as outlined in paragraphs 8 - 9 and 13 - 25, constituted willful violations of Supreme Court Rules 60.02, 60.03(1), 60.04(1)(d), and 60.04(1)(e), and, therefore, constitutes judicial misconduct pursuant to Wis. Stat. § 757.81(4)(a).

CONCLUSION

Based upon the above allegations, the Commission has concluded, pursuant to Wisconsin Administrative Code § 4.08(6) and Wis. Stat. § 757.85(5), that probable cause exists that Judge Berz engaged in misconduct. The Commission requests, pursuant to Wis. Stat. § 757.87, that the Chief Judge of the Court of Appeals select a three-judge panel and that the panel makes findings of fact, conclusions of law, and a recommendation for discipline, pursuant to Wis. Stat. § 757.89.

Dated this 18th day of September, 2024.

Wisconsin Judicial Commission
State of Wisconsin

A handwritten signature in dark ink, appearing to read "J. Van Hecke", is written over a horizontal line.

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