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January 6, 2011

VIA EMAIL (jonthan.becker@wi.gov) & REG. MAIL

Jonathan Becker, Division Administrator
Government Accountability Board -- Ethics Division
212 E. Washington Avenue
Madison, WI 53707

RE: Filing of Verified Complaint by 9to5 National Assn. of Working Women,
Milwaukee Chapter against Michael J. Gableman

Dear Division Administrator Becker:

Please find enclosed for filing on behalf of my client, 9to5, the following:

1. Verified Complaint of 9to5 National Association of Working Women, Milwaukee Chapter against Michael J. Gableman;
2. Opinion Letter dated January 5, 2012 of William Hodes to the Members of the Government Accountability Board addressing the merits of issues in the 9to5 Complaint; and
3. CV of William Hodes

Kindly file these documents to initiate the Board's investigation of the charges set forth in the Complaint. I am available to provide whatever information or assistance you may need from my client, from Mr. Hodes, or in any other manner the Board requires. Thank you for your service in this matter.

Sincerely,



Richard Saks

RS:me

Encls.

c: Client (w/encls.)
William Hodes (w/encls.)

**State of Wisconsin
Before the Government Accountability Board**

The Complaint of:

9TO5 NATIONAL ASSOCIATION OF
WORKING WOMEN, MILWAUKEE CHAPTER
207 E. Buffalo St., Suite # 211
Milwaukee, WI 53202

COMPLAINT

Complainant,

against

MICHAEL J. GABLEMAN, JUSTICE
Wisconsin Supreme Court
16 E. State Capitol
Madison, WI 53702-0001

Respondent.

APPLICABLE STATUTES

1. This complaint is brought pursuant to the "Code of Ethics for Public Officials and Employees" codified under Chapter 19, Subchapter III of the Wisconsin Statutes, regarding the conduct of Justice Michael J. Gableman.

STATEMENT OF VIOLATIONS

2. Based upon the facts outlined in paragraphs 3 through 9 below, Complainant, 9to5 National Association of Working Women Milwaukee Chapter ("9to5") alleges that Justice Michael Gableman:

- a. Used his position as Wisconsin Supreme Court Justice to obtain free legal services of substantial value for his private benefit in violation of sec. 19.45(2), stats.;
- b. Accepted such free legal services -- whether characterized as gift, favor or

loan – from a party likely to come before him as a Justice in violation of SCR 60.05(4)(e) and sec. 19.45(11)(c), stats.;

- c. Accepted such free legal services which could be reasonably expected to influence his votes in various matters in violation of sec. 19.45(3), stats.;
- d. Failed to report the receipt of such free legal services as a gift or otherwise in his annual statement of economic interests in violation of secs. 19.43 & 19.44, stats.;
- e. Failed to disclose to parties appearing before him – including Complainant’s case described below -- that he received free legal services from the law firm representing the opposing party in violation of SCR 60.05(4)(e) and sec. 19.45(11)(c), stats.;
- f. Failed to recuse himself when the donor law firm appeared before him in Complainant’s case described below in violation of SCR 60.05(4)(e) and sec. 19.45(11)(c), stats.

FACTUAL BACKGROUND OF 9TO5’S SICK LEAVE CASE
BEFORE JUSTICE GABLEMAN

3. On December 22, 2008, the Metropolitan Milwaukee Association of Commerce (MMAC), represented by attorneys Scott C. Beightol and Joseph Louis Olson of Michael Best & Friedrich LLP (MBF) brought suit against the City of Milwaukee to invalidate the Milwaukee Sick Leave Ordinance (MSLO), a piece of direct legislation passed via referendum held on November 4, 2008. In January of 2009, 9to5 National Association of Working Women, Milwaukee Chapter (9to5), was granted status as intervenor-defendant in the action to defend the constitutionality of the ordinance and the validity of its enactment.

4. The Circuit Court in Milwaukee County granted MMAC's request for a temporary injunction on February 6, 2009, and on June 12, 2009 granted summary judgment for MMAC and permanently enjoined implementation of the Ordinance. During the circuit court judge's rulings on 9to5's intervention motion, and subsequently during his ruling on the merits, the judge made commented on several occasions that this case would ultimately be decided by the Wisconsin Supreme Court.

5. 9to5 appealed the Circuit Court ruling to the Court of Appeals. The MBF attorneys continued to represent MMAC before the Court of Appeals. After oral argument, the Court of Appeals certified the case to the Wisconsin Supreme Court.

6. MBF attorneys represented MMAC before the Wisconsin Supreme Court. The Court split 3-3 on the case, with Justice Gableman voting to affirm the ruling of the circuit court as requested by MMAC. The 3-3 deadlock sent the matter back to the Court of Appeals which vacated the injunction. Thereafter the legislature passed Act 16 which preempted all local sick leave ordinances, and Judge Cooper on remand of the matter declared that the case was moot.

FACTUAL BACKGROUND OF JUSTICE GABLEMAN'S RELATIONSHIP WITH MBF ATTORNEYS AND HIS ACCEPTANCE OF FREE LEGAL SERVICES.

7. On Oct. 7, 2008, the Wisconsin Judicial Commission filed a complaint under Chapter 757, Stats., against Justice Gableman alleging that he violated Supreme Court Rule 60.06(3)(c) for a misrepresentation in a television advertisement supporting then-Judge Gableman's candidacy for the Supreme Court against incumbent Justice Louis B. Butler, Jr. Justice Gableman had defeated Butler in the spring 2008 election and started serving his 10-year term on the bench in August of 2008. Attorney Eric McLeod of Michael Best & Friedrich LLP (MBF) represented Justice Gableman against the misconduct allegations in the Judicial

Commission complaint. Complainants lack knowledge whether other MBF attorneys at MBF may also have provided services with attorney McLeod. Section 757.99, stats., provides for discretionary reimbursement by the Wisconsin Claims Board for judges who prevail in judicial misconduct cases brought under secs. 757.81-757.99, stats.

8. Attorney McLeod's representation included defense against the Judicial Commission's allegations of then-Judge Gableman's misconduct before a Judicial Conduct Panel, and then before the Wisconsin Supreme Court. On June 30, 2010 the Supreme Court voted 3-3 and reached impasse over whether to punish Justice Gableman for the misconduct alleged by the Judicial Commission. *In the Matter of the Disciplinary Proceedings Against the Honorable Michael J. Gableman: Wisconsin Judicial Commission v. Michael J. Gableman*, 2010 WI 62 (Wis. 2010). Since Justice Gableman was not a prevailing party under sec. 757.99, Stats., and also did not incur damages for attorneys' fees, he had no basis to petition the state claims board pursuant to sec. 16.53, Stats. to pay attorney McLeod for his legal services in defending against the charges of the Judicial Commission.

9. On November 28, 2011, the Milwaukee Journal Sentinel (MJS) reported that attorney McLeod stated that Justice Gableman had "a standard billing arrangement" with MBF. On December 15, 2011, the MJS reported that MBF General Counsel Jonathan Margolies wrote a letter earlier that week to the Wisconsin Supreme Court clarifying that Justice Gableman was required to pay his attorney fees under the arrangement only if he recovered those fees from the state. Since Gableman was not a prevailing party able to recover attorney's fees, he did not have to pay legal fees to the firm. Gableman was responsible for out-of-pocket expenses, and he did

pay those, the letter from Margolies said. MBF represented Gableman from July 2008 to July 2010.

10. Based upon information and belief, attorney McLeod also represented Justice Gableman in two other matters in 2008. One matter involved an ethics complaint filed by One Wisconsin Now against Justice Gableman with the Office of Lawyer Regulation. Another matter involved Justice Gableman's response to an open records request by the Milwaukee Journal Sentinel for emails. Complainants lack knowledge about the terms of the retainer agreement and whether Justice Gableman received additional gifts in the form of free legal services for representation in these two other matters.

RESPONDENT'S STATUTORY VIOLATIONS

11. As a position identified in sec. 20.923(2), stats., a Supreme Court Justice is a "state public official" subject to the Code of Ethics for Public Officials and Employees, Ch. 19, Subch. III, 19.42(13(c), 14), Stats.

12. Pursuant to sec. 19.45(11)(c), Stats., "justices and judges shall in addition to complying with the this subchapter, adhere to the code of judicial ethics." The code of judicial ethics proscribes gifts to judges and, excepting specific circumstances, provides that judges shall not "accept a gift, favor or loan from anyone" SCR 60.05(4)(e).

13. The exceptions to the gift prohibition of SCR 60.05(4)(e) confirm the impropriety of the legal services transaction between attorney McLeod and Justice Gableman. The Comment to this prohibition states that a "gift . . . that is excessive in value raises questions about the judge's impartiality and the integrity of the judicial office and might require recusal or

disqualification of the judge”

14. Complainant 9to5 appeared by its counsel before the Wisconsin Supreme Court and Justice Gableman in 2010 seeking to validate the MSLO. The only other party that filed briefs or argued before the Supreme Court was the MMAC, represented by MBF attorneys. Justice Gableman failed to disclose the fact that he received free legal services from MBF, and failed to recuse himself in the matter.

15. Adherence to the code of judicial ethics is an explicit requirement of the Code of Ethics for Public Officials and Employees. Sec. 19.45(11)(c), stats. Justice Gableman’s failure to disclose the receipt of free legal services and to recuse himself from the Milwaukee Sick Leave Ordinance case violated SCR 60.05(4)(e) and thereby also violated the Code of Ethics for Public Officials and Employees. Ch. 19, Subch. III, stats.

16. Justice Gableman used his position as a Justice to obtain an extraordinary retainer agreement with attorney McLeod for a complex legal matter. The free retainer had substantial value and provided a corresponding private benefit to Justice Gableman, who thereby violated sec. 19.45(2), Stats., and is subject to the civil and criminal penalties set forth at secs. 19.579 and 19.58, Stats.

17. Justice Gableman accepted the free legal representation provided by attorney McLeod, which was of such extraordinary value it could reasonably be expected to influence his votes on matters that might come before him involving MBF attorneys. As such, Justice Gableman violated sec. 19.45(3), Stats., and is subject to the civil and criminal penalties set forth at secs. 19.579 and 19.58, Stats.

18. Under Stat. §19.44(1)(g), Justice Gableman was also required to disclose on a

statement of economic interests and under the timetable set out in sec. 19.43, stats., the identity of persons providing him a gift. Justice Gableman has failed to do so, and is subject to the civil and criminal penalties set forth at secs. 19.579 and 19.58, stats.

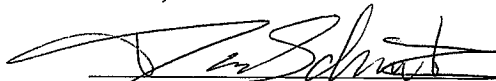
REQUEST FOR RELIEF

Complainant requests that:

- A. The Board investigate all of the above allegations, including the terms of the defense representation agreement between Respondent Justice Gableman and MBF attorneys regarding the October 7, 2008 Judicial Commission complaint, and all other matters for which MBF attorneys provided legal services to Justice Gableman;
- B. The Board find probable cause that Respondent violated the above-specified sections of Wisconsin Statutes, Chapter 19, and further request that the Board assess appropriate civil penalties set forth in sec. 19.579, stats.;
- C. The Board find probable cause that Respondent violated sec. 19.45(2 & 3), stats., and refer this matter to the district attorney in the appropriate county for criminal prosecution pursuant to sec. 19.58, stats.

VERIFICATION of Dana Schultz

I, Dana Schultz, Director of the 9to5 National Association of Working Women Milwaukee Chapter, being first duly sworn on oath state that I personally read the above complaint, and that the above allegations are true based on my personal knowledge and, as to those stated on information and belief, I believe them to be true.

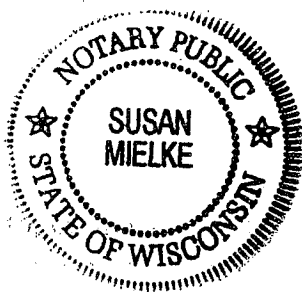

Dana Schultz

STATE OF WISCONSIN)
) ss.
MILWAUKEE COUNTY)
 (county of notarization)

Subscribed and sworn to before me
this 5th day of January, 2012.



Notary Public, State of Wisconsin.
My commission is permanent. *expires 1/25/15*





W. WILLIAM HODES
Attorney at Law
Admitted to Practice:
Florida
Indiana

January 5, 2012

Government Accountability Board
212 East Washington Avenue
Madison, Wisconsin 53707

Re: *Complaint Against Justice Michael Gableman*
(Milwaukee Chapter of 9-to-5)

To the Members of the Board:

I have been requested by the Hawks Quindel law firm to provide my analysis of a complaint against Wisconsin Supreme Court Justice Michael Gableman that it is filing with the Government Accountability Board on behalf of its client, the Milwaukee Chapter of the 9 to 5 National Association of Working Women. The gravamen of the complaint is that Justice Gableman accepted a significant gift of in-kind legal service from a prominent Wisconsin law firm, Michael Best & Friedrich, that he failed to disqualify himself when that firm represented other clients before the Supreme Court, that he failed to disclose the gift to the GAB, as required by the Wisconsin Code of Ethics for Government Officials and Employees, and that he violated several other provisions of that Code.

My qualifications to take on this assignment are shown in the attached curriculum vitae, but two items deserve special mention. First, from 2004-2007, I served as Co-Reporter to the American Bar Association, Joint Commission to Evaluate the Model Code of Judicial Conduct, which produced a major revision of the CJC that was adopted by the ABA House of Delegates in February 2007. Second, no doubt because of my work with the Joint Commission, I was invited to contribute a chapter to a comparative study of several aspects of the judicial systems in five English-speaking countries; *JUDICIARIES IN COMPARATIVE PROSPECTIVE* (Cambridge University Press, 2011; Hoong Phun Lee, ed.), Chapter 19, *Bias, the Appearance of Bias, and Judicial Disqualification in the United States*.

PLEASE REPLY TO:

COUNSEL AND ASSISTANCE TO LAWYERS

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I am also one of the co-authors, with Geoffrey Hazard and Peter Jarvis, of THE LAW OF LAWYERING, a leading treatise on legal ethics that is often cited by courts and ethics committees. The treatise, first published in 1985 and now in its third edition, is updated annually, which means that part of my professional work is to keep current with recent developments and national trends. Thus, although we have not yet incorporated the earlier controversy involving Justice Gableman's perhaps-literally-true-but-highly-misleading campaign ads into our book, I was of course familiar with it.

Mr. Richard Saks of Hawks Quindel provided me with press coverage and other material describing the current follow-on controversy, which arose out of Gableman's legal defense effort when charges related to those ads were brought before the Wisconsin Judicial Commission.

I was also provided with a copy of a complaint filed by the Wisconsin Democracy Campaign against Justice Gableman with the Wisconsin Judicial Commission in connection with the same matter. From what I have seen, and assuming that the basic factual allegations are true, that complaint appears to be sound. (And I take comfort from the press reports showing that Professors Steven Gillers and Charles Geyh agree with me. I have been a close professional colleague of the former in the field of the legal ethics for at least 20 years; the latter and I were co-reporters on the ABA Joint Commission project.)

Wisconsin is a rare jurisdiction (so far as I am aware) in which a misbehaving judge may be complained against not only before the judicial ethics disciplinary agency, but also before a government ethics board. As already noted, I have been asked to comment on the parallel complaint that the 9 to 5 organization is filing with the Government Accountability Board.

Before turning to the merits of that complaint, I should address a fact-finding issue that has been mentioned in several of the press accounts and in the Wisconsin Democracy Campaign's complaint itself. The propriety of Justice Gableman's conduct will depend in large measure on the precise terms of the fee agreement he had with the Michael Best & Friedrich law firm in the original disciplinary matter. Citing both confidentiality and the attorney-

client privilege, the firm has declined to provide actual copies of the agreement in question to the media or to anyone else.

Those objections will not wash before your Board, however, because you have subpoena power and will no doubt obtain the relevant Michael Best & Friedrich documents, *including time sheets*. You will also be able to obtain comparable documents from Gableman's Indiana counsel James Bopp.

Turning to the merits—still based on what I am assuming rather than what I know—it is hard not to see the fee agreement between Justice Gableman and the Michael Best & Friedrich firm as a thinly disguised gift. There appears to be a studied illusory character to the agreement: the justice will turn over to the firm whatever "fees" he is "reimbursed," which are almost certain to be zero or nominal in comparison to the true cost of the services. It is my understanding that the Wisconsin Claims Board typically reimburses only for "out-of-pocket damages," which would not apply to Gableman, because he did not pay anything (except expenses of the litigation).

Even so, reimbursement is only discretionary according to Stat. §757.99, which distinguishes between mandatory reimbursement of attorneys fees for cases involving claimed judicial permanent disability, and discretionary reimbursement in cases of alleged misconduct. Furthermore, any amount over \$10,000 has to be recommended by the Board and then approved by the legislature—an unlikely result in times of budget crunches everywhere.

For this reason (among others, no doubt), attorneys providing a defense to respondents in ethics matters almost always require a retainer in advance: even prevailing does not provide any assurance of recovering attorney fees on a contingent basis. Thus, the extraordinary deal offered by Michael Best to Justice Gableman was a substantial gift of free legal services that other attorneys and judges have not received in such cases. Inasmuch as both parties seemed to be aware of all of this, it is accurate to say not only that the firm knowingly made a gift of its services to Justice Gableman, but also that he knowingly accepted the gift.

Much of the public discussion I have seen of this issue—including the opinions provided by my colleagues Gillers and Geyh—seems to me to be

limited largely to linguistic or formalistic analysis, however. In my view, the key is *not* that there is no *res* that would at least potentially provide a source of funds to pay the lawyers' bill, as in the typical contingent fee tort action.

The best comparison is a federal civil rights action (under 42 U.S.C. §1983, for example), in which the plaintiff seeks only injunctive relief. It is perfectly proper, and not especially uncommon, for a lawyer to agree to take such a case under an agreement in which the client will turn over some or all of the fees that may be awarded under a fee-shifting statute such as 43 U.S.C. §1988.

If the plaintiff does not prevail, the lawyer earns no fee; that is not a gift of the services, however, merely a normal function of the contingent nature of the fee agreement. If the plaintiff does become the "prevailing party," case law interpreting the statute guarantees that a fee-shifting award will be made against the defendant in virtually every case. More important, the "lode star" protocol assures that the lawyer will be paid at market or near-market rates. See Hazard, Hodes & Jarvis, *THE LAW OF LAWYERING*, §§8.17-8.18.

It is the *absence* of that feature in the Wisconsin Claims Board route that made Michael Best & Friedrich's agreement with Justice Gableman a gift rather than a contingent fee gamble. If the client did not prevail, there would be no fee (as usual), but even if he *did* prevail, there would be only an opportunity to apply for a discretionary fee that would also be capped at a fixed amount that could only be overridden by the legislature—an amount that bore no relationship to the time expended by the firm. Thus, at an absolute minimum, the firm made a gift of the difference between the highest statutory rate and its billed time. The GAB will readily be able to determine the size of that gift.

As previously noted, judicial officers in Wisconsin not only must comply with the Wisconsin Code of Judicial Conduct, SCR Chapter 60, but also the Wisconsin Code of Ethics for Government Officials and Employees, Wisc. Stats. §§19.41, et. seq. Indeed, as 9 to 5 points out in its complaint, Stat. §19.45(11)(c) specifically make violation of the former a violation of the latter.

With respect to the Code of Judicial Conduct, actual enforcement is generally left to the Judicial Commission rather than the GAB. For completeness, however, I will note Justice Gableman's obvious violation of SCR 60.05

(4)(e)(10). That provision, with its unfortunate use of pre-2007 triple negatives, nonetheless makes clear that a judge may not accept *any* gift from a law firm such as Michael Best & Friedrich, which litigates with some frequency before the same judge. The violation of that specific provision is complete, moreover, whether or not the judge later reports or discloses the gift, and whether or not the judge later disqualifies himself from matters brought before the court by the law firm.

By contrast, ironically, under the Code of Ethics for Government Officials and Employees, Justice Gableman's most clear-cut violation—although not necessarily the most serious—was not the receipt of the gift itself, but the failure to report it. If you agree with my view that the law firm did indeed make a gift, and that Justice Gableman did indeed knowingly accept it, there is no further issue of fact or interpretation. Even if accepting the gift was proper—which clearly it was not, as discussed below—the failure to report alone constituted a completed violation of the Code of Ethics. Moreover, the remedy that the GAB can supply in such situations is also set out most clearly.

Under Stat. §19.44(1)(g), Justice Gableman was required to disclose—on the timetable set out in §19.43—the identity of the person giving him the gift. This was not done. As to remedy, the Board may petition a court to impose a civil forfeiture of up to \$500 under §19.579(1), and in addition, because Justice Gableman plainly “realized economic gain” by receiving free legal services in a heavily litigated matter over a long period of time, the court may require him to disgorge that illicit gain. That “makes the punishment fit the crime” in a most satisfying way.

Beyond this most clear and clean violation, the other violations set forth in the 9 to 5 complaint to the GAB also seem sound. They are subject to more nuanced fact-finding, however, and require you to make more of a judgment call.

First, consider the charge that Justice Gableman “used his position” for financial gain, in violation of Stat. §19.45(2). To find a violation, you would have to infer (or find as a fact) that the law firm would not have made the same gift to someone who was not a high-ranking state official. This seems

more than likely, of course, because for-profit law firms do not lightly give away billable hours, especially in today's climate (other than in response to the aspirational goal of providing *pro bono publico* services to persons of limited means and charitable, religious or civil rights organizations, as set out in SCR 20:6.1).

The other side of the equation is more subtle, because it could be said that an official does not "use" his position for private gain unless he actively *solicits* it. Your fact-finding may lead you to the conclusion that Justice Gableman did so here, of course. On the other hand, I believe that even without such a finding, the better reading of the phrase "use his position" should include *not rejecting* gain that was proffered only because of that position. This reading gains some strength from the fact that the next subparagraph of the Code, Stat. 19.45(3), equates soliciting *or* accepting things of value.

Second, the inference that once Justice Gableman accepted the gift, "it could reasonably be expected to influence" his votes and actions as a justice is strong. Because rules on gifts and influence are always to some extent prophylactic, it is not necessary to show that any improper influence actually eventuated in any particular case; Stat. 19.45(3) prohibits the acceptance of gifts non-trivial enough to cause a "reasonable expectation" of untoward influence.

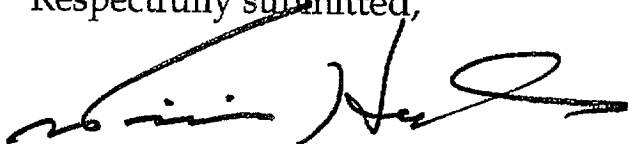
There is always a judgment call to be made about how to calibrate what is "reasonable," and to whom, but it is interesting to note that in *Caperton v. A.T. Massey Coal Co.*, 129 S. Ct. 2252 (2009), the Supreme Court found that the disqualification of a West Virginia Supreme Court justice was *constitutionally* required, because he would be unable to resist the temptation to repay the "debt of gratitude" that he owed to a wealthy coal operator with a case before the court. This temptation was said to be "inherent in human nature," despite the fact that benefactor made essentially *no* contributions to the election campaign of the justice, only very large independent expenditures that the successful candidate was powerless to accept or reject.

Finally, with respect to remedy, my understanding is the same as is set forth in the 9 to 5 Complaint. In connection with the failure to disclose the gift, the GAB can seek a civil fine and forfeiture (including disgorgement) through a

court. For the other violations, the GAB may make a criminal referral to the appropriate prosecuting authority, which may be especially appropriate in this case in order to deter future similar assaults on the impartiality and integrity of the courts.

I am obviously not being presented here as an expert witness in the traditional sense, but I would be pleased to provide whatever further assistance the Board requests.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "W. William Hodes", written over a horizontal line.

W. William Hodes, Esq.
Attorney at Law

W. William Hodes, Esq.
The William Hodes Law Firm
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COLLEGE

- * Harvard College, B.A., 1966, *cum laude in general studies*.

LAW SCHOOL

- * Rutgers Law School, J.D., 1969, *with highest honors*.

ACTIVITIES

- * Research Editor (supervisor of student writing), Rutgers Law Review.

HONORS

- * A. Harry Moore Prize—highest grade over entire course.
- * West Publishing Company Award—highest average in senior class.
- * Cornelius W. Wichersham, Jr. Award—highest grade in Constitutional Law.
- * J. Skelly Wright Prize—greatest contribution to the civil rights, liberties and human affairs of fellow citizens during the three years at Rutgers Law School.

MEMBER OF THE BAR

- * Louisiana (1969-2009), New Jersey (1971-2009), Indiana (1999-present), and Florida (2011-present).
- * United States Supreme Court (1974-present).

EMPLOYMENT

- * Associate, Smith & Scheuermann, New Orleans, Louisiana; June 1969 to July 1970.
- * Assistant Corporation Counsel, City of Newark, New Jersey; October 1970 to December 1973.
- * Staff Attorney, Education Law Center, Newark, New Jersey; December 1973 to June 1978.
- * Designated Counsel (pool attorney), Office of the Public Defender of New Jersey, Appellate Section; September 1971 to June 1978.
- * Academic Appointments (see below); September 1978 to December 1999.
- * Law Clerk to Justice Ruth Bader Ginsburg, United States Supreme Court, (sabbatical leave); August 1996 to July 1997.
- * Owner and President, The William Hodes Law Firm, f/k/a/ The William Hodes Professional Corporation; July 1999 to present.

ACADEMIC APPOINTMENTS

- * Bigelow Teaching Fellow and Lecturer in Law, University of Chicago Law School; September 1978 to June 1979.
- * Assistant Professor of Law, Associate Professor of Law, and Professor of Law, Indiana University School of Law-Indianapolis; August 1979 to December 1999.
- * Director, Indiana University School of Law, China Summer Program, Shanghai; 1987 and 1989.
- * Scholar-in-Residence and Lecturer, China University of Political Science and Law, Beijing; Spring, 1989.
- * Visiting Professor of Law, Southern Illinois University School of Law; Fall, 1990; University of Illinois College of Law; Fall, 1994.
- * Professor Emeritus of Law, Indiana University; January 2000 to present.

PUBLICATIONS

BOOKS AND BOOK CHAPTERS

- * THE LAW OF LAWYERING (with Geoffrey C. Hazard, Jr. and Peter R. Jarvis) (Aspen Law and Business, 1985; 3d ed., 2000) (with annual supplements).
- * JUDICIARIES IN COMPARATIVE PROSPECTIVE (Cambridge University Press, 2011; Hoong Phun Lee, ed.), Chapter 19, *Bias, the Appearance of Bias, and Judicial Disqualification in the United States*.

ARTICLES

- * *Seeking the Truth Versus Telling the Truth at the Boundaries of the Law: Misdirection, Lying, and "Lying with an Explanation,"* 44 S. Tex. L. Rev. 53 (2002).
- * *Cheating Clients With the Percentage-of-the-Gross Contingent Fee Scam,* 30 Hofstra L. Rev. 767 (2002).
- * *Truthfulness and Honesty Among American Lawyers: Perception, Reality, and the Professional Reform Initiative,* 53 S. Car. L. Rev. 527 (2002).
- * *Accepting and Rejecting Clients—the Moral Autonomy of the Second-to-the-Last Lawyer in Town,* 48 U. Kan. L. Rev. 977 (2000).
- * *Rethinking the Way Law is Taught: Can we Improve Lawyer Professionalism by Teaching Hired Guns to Aim Better?* 87 Ky. L.J. 1019 (1999).
- * *The Professional Duty to Horseshed Witnesses—Zealously, Within the Bounds of the Law,* 30 Texas Tech. L. Rev. 1343 (1999).
- * *Foreword: The Several Stances of the Modern American Lawyer,* 47 U. Kan. L. Rev. 777 (1999).
- * *Congressional Federalism and the Judicial Power: Horizontal and Vertical Tension Merge,* 32 Ind. L. Rev. 155 (1998).

- * *Lord Brougham, the Dream Team, and Jury Nullification of the Third Kind*, 67 U. Colo. L. Rev. 1075 (1996).
- * *What Ought to be Done—What Can be Done—When the Wrong Person is in Jail or About to be Executed? An Invitation to a Multi-Disciplined Inquiry, and a Detour About Law School Pedagogy*, 29 Loy. L.A.L. Rev. 1547 (1996).
- * *The Overtly "Political" Character of the Advise and Consent Function: Offsetting the Presidential Veto with Senatorial Rejection*, 7 St. John's J. Legal Comment. 109 (1991).
- * *The Code of Professional Responsibility, the Kutak Rules, and the Trial Lawyer's Code: Surprisingly, Three Peas in a Pod*, 35 U. Miami L. Rev. 739 (1981).
- * *Women and the Constitution: Some Legal History and a New Approach to the Nineteenth Amendment*, 25 Rutgers L. Rev. 26 (1970).
- * *Dombrowski v. Eastland—A Political Compromise and its Impact*, 22 Rutgers L. Rev. 137 (1967).

OTHER PUBLICATIONS

- * *Lawyers Changing Firms: Who Represents the Clients?* LAWYERS USA, August 11, 2011.
- * *The Law and Ethics of "Pretexting,"* LAWYERS USA, November 3, 2010.
- * *When Must an Attorney Report another Lawyer's Misconduct?*, LAWYERS USA, August 25, 2010.
- * *Ethical Negotiation: Misdirection Without Falsehood*, LAWYERS USA, March 16, 2009.
- * *Client Confidentiality in a Wired (and Sometimes Wireless) World*, LAWYERS USA, November 17, 2008.
- * *Nino Protested Too Much, but Larry Created the Appearance of Politicizing Judicial Ethics*, 15 THE PROF. LAWYER, November 2004, at 1.

- * *That is Correct: When a Client Lies, Duty of Candor to the Court Trumps Confidentiality, and Turns Silence into Complicity*, RES GESTAE, April 2003, at 46.
- * *We Need More Zealousness, not Less—But Within the Bounds of Law*, RES GESTAE, March 2001, at 46.
- * *A Clerk's-Eye View of the Supreme Court*, INDIANA ALUMNI MAGAZINE, Jan.-Feb. 1998, at 30.
- * *The Ethics of Defending Guilty Clients*, NATIONAL LAW JOURNAL, May 29, 1995 (Op-Ed).
- * *How Much Purity Can a Judge Attain?*, NATIONAL LAW JOURNAL, August 1, 1994 (Op-Ed).
- * *Two Cheers for Lying (About Immaterial Matters)*, 5 THE PROF. LAWYER, May 1994, at 1.
- * "Thinking and Writing Like a Lawyer," unpublished materials, now incorporated in orientation materials, "Approaching the First Class," Indiana University School of Law-Indianapolis ((c) 1978, 1980, 1981).
- * *The Model Rules After New Orleans—Radical at Last*, 35 Virginia Law Weekly, No. 21 (April 8, 1983).

PROFESSIONAL ACTIVITIES

MEMBERSHIPS AND POSITIONS HELD

- * Member, American Law Institute-American Bar Association Advisory Panel on Professional Responsibility, 2006-2007.
- * Co-Reporter, American Bar Association, Joint Commission to Evaluate the Model Code of Judicial Conduct, 2004-2007.
- * Board of Directors, Association of Professional Responsibility Lawyers (APRL), 2002-2005.

- * Member, Advisory Council to the American Bar Association Ethics 2000 Commission, 1998-2001.
- * Member, National Conference of Bar Examiners, Multi-State Professional Responsibility Examination Drafting Committee, 1996–2001.
- * Consultant and On-Air Commentator, MSNBC's *Inside the Supreme Court* segment, November 2000 (during presidential election controversy).
- * Elected Member, American Law Institute, 1997-present.
- * Consultant, the W.M. Keck Foundation, 1993 (development and production of two professionally acted videotapes for use in Professional Responsibility courses in American law schools).
- * Chair, Association of American Law Schools, Section on Professional Responsibility, 1990.

SPEECHES AND PRESENTATIONS (partial list)

- * Presenter, American Bar Association National Conference on Professional Responsibility, *A Pragmatic Approach to Conflicts of Interest*, June 2, 2011.
- * Presenter, Association of Professional Responsibility Lawyers Annual Meeting, *Tanned, Rested, and Ready—Now What? The Practical Side of Expert-Witnessing*, July 31, 2009.
- * Presenter, Hinshaw and Culbertson 2009 Legal Malpractice and Risk Management Conference, *Beyond the Basics—Selecting and Using Expert Witnesses*, March 4, 2009.
- * Presenter, Association of Professional Responsibility Lawyers Annual Meeting, *Joint Representation and Aggregate Settlements*, August 10, 2007.
- * Presenter, South Texas College of Law Symposium, *The Ethics of Advocacy*, October 18, 2002.

- * Presenter, National Business Institute Continuing Legal Education program, *The Attorney-Client Privilege, Confidentiality, and the Work-Product Doctrine*, June 5, 2002.
- * Presenter, Indiana Continuing Legal Education Forum, Business Law Institute, *Legal Ethics for the Business Lawyer*, December 5, 2001.
- * Faculty, Hofstra University School of Law Symposium, *Legal Ethics: What Needs Fixing?*, September 9-11, 2001.
- * Faculty, Hofstra University School of Law Symposium, *Legal Ethics: The Core Issues*, March 10-12, 1996.
- * Faculty, University of Colorado Law Review Symposium, *O.J. Simpson and the Criminal Justice System on Trial*, February 23-24, 1996.
- * Debate with defense attorney Alan Dershowitz on legal ethics issues arising in the O.J. Simpson case, *Larry King Live*, August 28, 1995.