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SUPREME COURT

Supreme Court of Wisconsin



No. 2024AP2356-D

OFFICE OF LAWYER REGULATION

V. MICHAEL J. GABLEMAN

December 4, 2025

Justice Janet C. Protasiewicz has entered the following order:

Michael J. Gableman moves for my recusal arguing that statements I made in a June 2022 campaign press release create the appearance that I would be biased in this attorney disciplinary proceeding. Like all Wisconsin judges, I swore an oath to “faithfully and impartially” discharge the duties of my office. WIS. STAT. § 757.02(1). The law presumes I will act “fairly, impartially, and without prejudice.” *State v. Herrmann*, 2015 WI 84, ¶24, 364 Wis. 2d 336, 867 N.W.2d 772. Gableman bears the burden to overcome that presumption. *Id.* I alone decide a motion for my recusal. *State v. Henley*, 2011 WI 67, ¶26, 338 Wis. 2d 610, 802 N.W.2d 175. After reviewing Gableman’s motion, the facts, and the governing law, I conclude that recusal is not required and therefore deny the motion.

I. BACKGROUND

Gableman’s recusal motion centers on a press release that my campaign issued on June 15, 2022.¹ The press release primarily concerned my opponent, Justice Dan Kelly, but it also mentioned Gableman. The passage Gableman objects to states:

¹ The full press release is available at: *Protasiewicz Campaign: Statement on Election Misinformation Tour*, WISPOLITICS (June 15, 2022) <https://www.wispolitics.com/2022/protasiewicz-campaign-statement-on-election-misinformation-tour> [https://perma.cc/5QED-LMDT].

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It's incredibly disappointing to see former appointed Justice Dan Kelly attach himself to this aggressively dishonest and partisan campaign This disgraceful effort to promote Donald Trump's Big Lie about the 2020 election should be opposed by people of good faith from every inch of the political spectrum. . . .

It's too bad that Dan Kelly continues to join Mike Gableman in courting extremists who oppose democracy. A Supreme Court justice needs to be independent and follow the rule of law despite their own personal beliefs. Dan Kelly and Mike Gableman have demonstrated to the citizens of Wisconsin that they are not fit to be on the bench.

On November 19, 2024—over two years after my press release—OLR filed the complaint underlying this disciplinary proceeding. Briefly, the complaint alleges that in June 2021, Robin Vos, Speaker of the State Assembly, retained Gableman to represent the Assembly in an investigation of election administration in Wisconsin. Vos terminated Gableman in August 2022. Counts 1 through 8 concern Gableman's conduct during this period:

Counts 1 and 2: Gableman filed petitions for writs of attachment against the Mayors of Madison and Green Bay making false statements of fact and omitting material facts necessary for the tribunal to make an informed decision, in violation of Supreme Court Rule (SCR) 20:3.3(a)(1), SCR 20:3.3(d) (Candor toward the tribunal), and SCR 20:8.4(c) (Misconduct).

Count 3: Gableman made false statements of material fact about the Mayors of Madison and Green Bay in public testimony before an Assembly Committee in violation of SCR 20:4.1(a) (Truthfulness in statements to others), SCR 20:4.4(a) (Respect for rights of third persons), and SCR 20:8.4(c) (Misconduct).

Count 4: At a Dane County Circuit Court hearing, Gableman knowingly disobeyed a court order and engaged in conduct intended to disrupt the tribunal in violation of SCR 20:3.4(c) (Fairness to opposing party and counsel), SCR 20:3.5(d) (Impartiality and decorum of the tribunal), SCR 20:8.4(g) (Misconduct), and SCR 40:15 (Attorney's oath).

Count 5: At the same hearing Gableman made false statements concerning the judge's integrity and alleged bias in violation of SCR 20:8.2(a) (Judicial and legal officials), SCR 20:8.4(g) (Misconduct), and SCR 40:15 (Attorney's oath).

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Count 6: At the same hearing, Gableman made false, derogatory, and demeaning public statements about opposing counsel in violation of SCR 20:8.4(g) (Misconduct) and SCR 40:15 (Attorney's oath).

Count 7: In his capacity as Custodian of Records for the Office of Special Counsel, Gableman violated Wisconsin's Open Records Law and Records Retention Law in violation of SCR 20:1.1 (Competence).

Count 8: Gableman agreed to represent the Assembly with the undisclosed intent to pursue his personal interests and to enlist public support to pressure Vos to expand the objectives, expense, and timeframe of the investigation, and then did so, in violation of SCR 20:1.2(a) (Scope of representation) and SCR 20:1.7(a)(2) (Conflicts of interest current clients).

Two additional counts concern Gableman's conduct in 2024:

Count 9: Gableman appeared on two video broadcasts where he promoted Vos's recall and revealed information about his representation of the Assembly in violation of SCR 20:1.6(a) (Confidentiality) and SCR 20:1.9(c)(2) (Duties to former clients).

Count 10: During this OLR investigation, Gableman made false statements to OLR in violation of SCR 20:8.4(h) (Misconduct) and SCR 22.03(6) (Investigation).

On April 7, 2025, Gableman stipulated that "he cannot successfully defend against the allegations of misconduct contained in the Complaint" and that the allegations "provide an adequate factual basis" to support a determination that he committed the SCR violations alleged in each of the Complaint's 10 counts. Gableman further stipulated that "the appropriate level of discipline for [his] SCR violations is a three-year suspension of [his] license to practice law in Wisconsin."

II. ANALYSIS

Gableman contends that I must recuse myself because my alleged appearance of bias violates his right to due process, SCR 60.03, SCR 60.05(1)(a), and WIS. STAT. § 757.19(2)(g).

A. THE JUNE 2022 PRESS RELEASE

The June 2022 press release expressed my view that Kelly and Gableman were unfit to serve as judges because, in my opinion, their conduct in connection with the 2020 election undermined judicial independence and the rule of law. The press release

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said nothing about SCR ch. 20 (Rules of Professional Conduct for Attorneys), whether Gableman violated SCR ch. 20, or what sanction would be appropriate if he did. At the time I issued the press release, OLR had not filed a complaint against Gableman; that occurred more than two years later.

This proceeding, in contrast, arises from specific allegations of professional misconduct under SCR ch. 20 and Gableman's stipulation that he cannot successfully defend against them. The court must review the referee's conclusions and decide whether the stipulated three-year suspension is appropriate discipline for Gableman. My campaign statements about Gableman's fitness for judicial office do not address, let alone predetermine, these matters.

B. DUE PROCESS

Due process requires "[a] fair trial in a fair tribunal." *In re Murchison*, 349 U.S. 133, 136 (1955). The only time that the Supreme Court has found a due process violation in the context of a judicial election is *Caperton v. A.T. Massey Coal Company, Inc.*, 556 U.S. 868 (2009). *Caperton* held that a campaign contribution offends due process only where there is "a serious risk of actual bias—based on objective and reasonable perceptions." *Id.* at 884. That occurs "when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising funds or directing the judge's election campaign when the case was pending or imminent." *Id.*

The Supreme Court has not held that due process requires recusal whenever a judge has previously expressed views on legal or political issues, including during a campaign. To the contrary, it has acknowledged that judges may express their views on disputed legal issues. *See FTC v. Cement Inst.*, 333 U.S. 683, 702–03 (1948) (no due process violation where a judge previously expressed a view about whether certain conduct is unlawful). And it has acknowledged that judges routinely express their views before and after they take the bench through teaching, speeches, writing, and prior opinions. *Republican Party of Minn. v. White*, 536 U.S. 765, 779 (2002).

What due process forbids is a pledge, a promise, or a commitment to rule a particular way in a particular case. *Duwe v. Alexander*, 490 F. Supp. 2d 968, 976 (W.D. Wis. 2007). Statements like "I will" or "I will not" are pledges. Statements like "I believe" or "it is my opinion that" signal the absence of a commitment. *Id.*

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My press release expressed my opinion about the importance of judicial independence and adherence to the rule of law and my view that Gableman and Kelly were not fit for the bench. It did not say “I will” or “I will not” rule a certain way in any hypothetical, future OLR proceeding.

Gableman’s reliance on *Miller v. Carroll* is also misplaced. See 2020 WI 56, ¶¶21–35, 392 Wis. 2d 49, 944 N.W.2d 542 (citing *Caperton*, 556 U.S. 868). Neither *Miller* nor *Caperton* involved campaign speech. Gableman cites no case extending those decisions to require recusal based on a judge’s campaign statements that do not contain a pledge about how she will decide a particular case. And he does not explain how my press release prevents me from reviewing the specific, stipulated OLR violations and suspension. In sum, Gableman has failed to show that the Due Process Clause requires my recusal.

C. SCR CHAPTER 60

Gableman also invokes SCR ch. 60 (Code of Judicial Conduct). But SCR ch. 60 provides judges notice of prohibited conduct and sets procedures for imposing discipline. *Henley*, 338 Wis. 2d 610, ¶22. An alleged violation of SCR ch. 60 is addressed through the Judicial Commission. It does not disqualify a judge from pending case. *State v. Am. T.V. & Appliance of Madison, Inc.*, 151 Wis. 2d 175, 185, 443 N.W.2d 662 (1989). In any event, Gableman merely cites the title of SCR 60.03 and quotes the text of SCR 60.05(1)(a). He fails to develop any argument regarding either provision. I cannot develop an argument for him. *Serv. Emps. Int’l Union, Loc. 1 v. Vos*, 2020 WI 67, ¶24, 393 Wis. 2d 38, 946 N.W.2d 35.

D. WIS. STAT. § 757.19(2)(g)

This leaves only WIS. STAT. § 757.19(2)(g), which requires a judge to recuse from a proceeding when she determines that, for any reason, she cannot, or it appears that she cannot, “act in an impartial manner.” This is a subjective inquiry. The judge alone decides whether she can be impartial or whether there is an appearance of partiality. *Am. T.V. & Appliance*, 151 Wis. 2d at 183. My press release stated my beliefs about judicial independence, the rule of law, and Gableman’s fitness to hold judicial office. It did not address the matters now before the court. I am confident that I can, in fact and appearance, act impartially in this attorney disciplinary proceeding.

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Michael J. Gableman has failed to carry his burden of proving that I must recuse myself from this attorney disciplinary proceeding. Therefore, I deny his motion for my recusal.

IT IS ORDERED that Michael J. Gableman's Motion to Recuse Justice Janet C. Protasiewicz is denied.

Samuel A. Christensen
Clerk of Supreme Court

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