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CLERK OF SUPREME COURT
OF WISCONSIN

Supreme Court of Wisconsin

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Timothy C. Samuelson
Director

April 24, 2025

VIA EMAIL and US MAIL (jjw@winiarskilaw.com)

Referee James Winiarski

Re: Disciplinary Proceedings Against Michael J. Gableman
Sup. Ct. Case No. 2024AP2356-D

Dear Referee Winiarski:

Attached please find *OLR's Opening Submission* filed pursuant to your *Scheduling Order* dated April 9, 2025. Please note that OLR is also filing two binders of exhibits to accompany the Opening Submission. Those binders are being sent to you by overnight delivery. By copy of this letter, the Opening Submission and the binders are being hand-delivered today to the Clerk of the Supreme Court, and to Mr. Engel.

Also, if you would like an electronic version of the exhibits on a flash drive, let me know and we can provide that.

Please let me know if you have any questions, or if the binders do not arrive tomorrow.

Thank you.

Very truly yours,

/s/ Donald K. Schott

Donald K. Schott
Retained Counsel for OLR

DKS:mc
Enclosures

cc: Clerk of Supreme Court (w/originals)
Attorney Peyton B. Engel (w/enclosures) (hand-delivered)

STATE OF WISCONSIN IN SUPREME COURT

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST MICHAEL J. GABLEMAN, ATTORNEY AT LAW.

CASE CODE 30912

OFFICE OF LAWYER REGULATION,

Complainant;

CASE NO. 2024AP2356-D

MICHAEL J. GABLEMAN,

Respondent.

FILED
APR 24 2025
CLERK OF SUPREME COURT OF WISCONSIN

OLR'S OPENING SUBMISSION

The Office of Lawyer Regulation ("OLR") makes this submission pursuant to the stipulation of the parties and the Referee's Scheduling Order dated April 9, 2025. Section I shows that the allegations of the *Complaint*, which are not contested by the Respondent, and the additional documents included with this submission, establish the violations alleged in each of the ten counts of the *Complaint*. Section II demonstrates that the appropriate sanction for these violations is a three year suspension of Gableman's law license.

I. The record and relevant legal authority establish, by clear, satisfactory and convincing evidence, that Gableman engaged in the misconduct alleged in all ten counts of the *Complaint*.

1. Count 1.

1. Gableman violated SCR 20:3.3(a)(1), SCR 20:3.3(d), and SCR 20:8.4(c) by filing a Petition seeking an *ex parte* Writ of Attachment against the Mayor of Madison which contained false

statements, and which failed to inform the tribunal of material facts known to Gableman that would enable the tribunal to make an informed decision on the petition.[1]

2. On November 29, 2021, Gableman signed and caused to be filed a "Petition For A Writ Of Attachment Of The Person" in the Circuit Court of Waukesha County. (Compl. ¶ 68, Exhibit 1)

3. Gableman's Petition asked the court to do two things:

> 1. issue an *ex parte* Writ of Attachment on the person of Satya Rhodes-Conway, the Mayor of Madison, Wisconsin, and
>
> 2. order the Waukesha County Sheriff to "execute such commitment"--that is, find Mayor Rhodes-Conway and jail her--until she "fulfilled her legal duties" in responding to a subpoena from the Office of Special Counsel (OSC).

4. The Petition offered these factual assertions in support of issuing the Writ:

> Whereas, the subpoena (Exhibit A attached) was lawfully issued and set a time and place certain, October 22, 2021 in Waukesha County, for delivery of certain documents and for testimony by Satya Rhodes-Conway.
>
> Whereas, that time and place certain was unilaterally continued by the Special Counsel during a period of negotiation with the City attorney, to November 15, 2021 at 9:00 am in Waukesha County.
>
> Whereas, Satya Rhodes-Conway did fail to appear on November 15, 2021 without justification.

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[1] **SCR 20:3.3 provides:** "(a) A lawyer shall not knowingly: (1) Make a false statement of fact or law to a tribunal..." (d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

SCR 20:8.4(c) provides: "It is professional misconduct for a lawyer to: (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

5. Gableman attached several exhibits to the Petition: documents establishing the Wisconsin Assembly's appointment of Gableman as Special Counsel, memos from the Legislative Council and the Legislative Reference Bureau discussing legislative subpoena power, the subpoena issued to Mayor Rhodes-Conway, and an October 21, 2021, email from Gableman to the City Attorney of Madison. (Exhibit 1) Gableman provided no other information in support of the Petition. (Compl. ¶ 74)

6. The Petition contained three false or misleading statements, in violation of SCR 20:3.3(a)(1).

7. First, after correctly stating that Mayor Rhodes-Conway had been served with a subpoena commanding her to appear for a deposition before the Special Counsel on October 22, 2021, the Petition alleged that the time and place of Mayor Rhodes-Conway's deposition had been "unilaterally continued" to November 15, 2021. That is false. OSC never continued Mayor Rhodes-Conway's deposition. To the contrary, Gableman himself told Madison's City Attorney that the Mayor's deposition would be unnecessary if Madison produced the requested documents, which it subsequently did. (Compl. ¶¶ 58-61, 71, Exhibit 2 at ¶ 16)

8. Second, including the October 21, 2021 email as an attachment to the Petition constituted a separate false statement because it misled the court about whether the deposition of Mayor Rhodes-Conway had been continued. The OSC had issued three separate subpoenas to officials in Madison: one to the City clerk, one to Mayor Rhodes-Conway and one requiring Madison to designate a "person most knowledgeable" about the 2020 election.

(Compl. ¶ 45-46) The October 21 email referred to continuing the "person most knowledgeable" deposition, not the deposition of Mayor Rhodes-Conway. (Exhibit 1 at MJG 1810) As noted above, Gableman had previously told the City Attorney that the Mayor's deposition would not be necessary if Madison produced the documents it had agree to produce. (Exhibit 2 at ¶ 16) So attaching the email to the Petition was misleading. That is a violation of SCR 20:3.3(a)(1). "Any differences between false and misleading statements are irrelevant for Rule 3.3(a)(1) purposes. A lawyer who deliberately misleads a court violates Rule 3.3(a)(1), even if the statement at issue is literally true and therefore not false." Douglas R. Richmond, *Appellate Ethics: Truth, Criticism, and Consequences,* 23 Rev. Litig. 301, 309-310 (Spring 2004) (references to ABA Model Rules of Professional Conduct).

9. Third, Gableman's assertion in the Petition that Mayor Rhodes-Conway had failed to appear for deposition "without justification" is also false. (Compl. ¶ 72) She was "justified" in not appearing for a deposition because Gableman told Madison City Attorney Michael Haas that if the City produced certain documents, which it subsequently did, a deposition of the Mayor would not be necessary. (Compl. ¶¶ 58-61, Exhibit 2 at ¶ 16) Neither Gableman nor anyone else at OSC ever rescinded this representation to Haas. (Compl. ¶ 61) Therefore, saying the Mayor failed to appear "without justification" is untrue.

10. In addition to these false statements, Gableman's Petition also failed to inform the court of several material

facts known to him that would have enabled the court to make an informed decision on the *ex parte* Petition.

11. The *ex parte* nature of Gableman's Petition for the Writ of Attachment makes Gableman's nondisclosures a violation of SCR 20:3.3(d). *See* ABA Comment [14] on SCR 20:3.3:

> Ordinarily, an advocate has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in any ex parte proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision.

12. The Petition violated SCR 20:3.3(d) because it failed to inform the court of the prior extensive discussions between Madison City Attorney Haas and OSC about the three deposition subpoenas issued to Madison personnel, and OSC's agreement that if the City produced certain documents the depositions of the Mayor and the City Clerk would not be necessary. Because the City had produced the promised documents; the depositions were not necessary. (Compl. ¶ 48-67)

13. The following numbered paragraphs summarize those prior extensive discussions and the resulting agreements between Gableman and Madison:

> 1. Within days of receiving the three Madison related subpoenas, Madison City Attorney Haas contacted OSC asking to discuss the subpoenas.

(Compl. ¶¶ 48-51, Exhibit 3) On October 7, 2021, Haas spoke with Andrew Kloster of OSC. They reached an agreement regarding documents Madison would produce in response to the subpoenas. As part of that agreement, OSC agreed the depositions scheduled for October 15 and 22 would not go forward on those dates. OSC would review the documents produced by Madison, and make a determination regarding the need for any depositions after that review. (Compl. ¶¶ 52-57, Exhibit 4)

2. On October 8, 2021, Haas spoke directly to Gableman. Gableman told Haas he viewed the requested appearances by Mayor Rhodes-Conway and the City Clerk as being necessary only for the purposes of making sure that Madison produced the requested documents. On the other hand, Gableman said that he still may want to interview a person most knowledgeable at some point. (Compl. ¶ 58, Exhibit 2 at ¶ 16)

3. On October 14, 2021, Haas sent Gableman a flash drive containing documents produced by the City of Madison. Haas' cover letter to Gableman specifically confirmed their prior conversation "that you included the requests that the City Clerk and Mayor appear for an interview solely for the purpose of ensuring delivery of the documents and as a result of this production of documents, neither Clerk Witzel-Behl nor Mayor Rhodes-Conway will appear for an interview on October 15 or October 22, 2021." With respect to the person most knowledgeable deposition, Haas wrote that the City "will wait to hear from your office as to whether you still wish to schedule such a deposition for a future date. We would also need more details about the location and forum of such a deposition, as well as the specific topics you wish to explore before we can confirm attendance by a City official." Haas also made clear that the City continued to reserve "the right to object to the issued subpoenas or subsequent requests based on appropriate reasons." (Compl. ¶¶ 59-60, Exhibit 5) Neither Gableman nor anyone else from OSC responded to this letter. (Compl. ¶ 61)

4. On October 21, 2021, Haas received an email from Gableman. (Exhibit 6) Gableman stated he was continuing the return date for the person most knowledgeable deposition from October 22 to November 15, 2021, "in order to provide our office with more time to review materials produced last week, as well as to give both parties additional time to reach an understanding of the scope and nature of the topics to be addressed." The email said nothing about the deposition of Mayor Rhodes-Conway or the deposition of the Madison City Clerk, both of which Gableman had told Haas on October 8 would not be necessary if the documents were produced. This is the email Gableman attached to the *ex parte* Petition. (Compl. ¶ 62-63, Exhibit 6)

5. On November 2, 2021, Haas responded to Gableman's October 21, 2021 email about the person most knowledgeable deposition. (Compl. ¶¶ 64-65, Exhibit 7) In that response, Haas pointed out the following:

a. Litigation had recently been commenced in Dane County by the Wisconsin Department of Justice on behalf of the Wisconsin Election Commission (WEC) challenging OSC's authority to issue subpoenas and require depositions.

b. Gableman had not followed up on his October 21 email by providing any information about the intended scope and nature of the topics to be discussed at the person most knowledgeable deposition scheduled for November 15, 2021.

c. Haas "reiterate[ed] our understanding that no official from the City of Madison is required to appear on November 15, 2021 unless we are provided with a more specific scope of inquiry and reach an agreement on other details such as the format and length of any deposition."

> 6. Neither Gableman nor anyone else from OSC responded to Haas' November 2 letter. Nor did Gableman or anyone else from OSC make any proposal or effort designed to "reach an understanding of the scope and nature of the topics to be addressed in the [person most knowledgeable] deposition," as promised in Gableman's October 21 email. In fact, Haas did not have any further communication with anyone from OSC prior to November 29, 2021, when Gableman filed his Petition for a Writ of Attachment alleging that Mayor Rhodes-Conway had failed "to appear on November 15, 2021 without justification." (Compl. ¶¶ 66-67, Exhibit 2 at ¶ 20)

14. Gableman's Petition failed to mention any of these facts. Because they involved Madison's compliance with the subpoenas--and Gableman's agreements regarding that compliance--the facts were material to a decision on whether to grant Gableman's Petition for Writ of Attachment. Their omission violated SCR 20:3.3(d). (Compl. ¶¶ 74-76)

15. The Petition also violated SCR 20:3.3(d) because it failed to inform the court of another pending legal proceeding challenging the legal validity of the subpoenas served on Madison, the City Clerks, Mayors and "persons most knowledgeable" for Green Bay, Kenosha, Milwaukee and Racine and two officials at the Wisconsin Election Commission. (Compl. ¶¶ 77-80)

16. On October 21, 2021, the Wisconsin Election Commission (WEC), represented by the Wisconsin Department of Justice, sued OSC seeking a judicial determination that the subpoenas issued to WEC and its personnel were invalid, and seeking an injunction against enforcing them. (Compl. ¶¶ 77-78, Exhibit 8)

17. DOJ called the subpoenas invalid because: (a) they required appearance before the Special Counsel, not a legislative

committee; (b) the deposition topics were too vague to satisfy due process; (c) the subpoenas were for the purpose of law enforcement, not legislative fact finding; and (d) the documents requests were impermissibly overbroad, vague and burdensome. (Compl. ¶ 79, Exhibit 8)

18. This parallel litigation was obviously material and relevant to Gableman's Petition, because the subpoenas to WEC were similar to the subpoenas to Madison. In fact, City Attorney Haas had pointed out the existence of this litigation, and its relevancy to the subpoenas to Madison, in his November 2 letter to Gableman. (Exhibit 7.) Gableman knew about the litigation, and he knew that a hearing had been scheduled in the litigation on WEC's motion for an injunction, when he filed his Petition on November 29, 2021. (Compl. ¶ 80) But he did not provide any of this information to the Court. (Compl. ¶¶ 77-80, Exhibit 1) This failure constitutes a lack of candor under SCR 20:3.3.

19. The duty of candor requires lawyers to disclose the existence of other pending litigation "which may conceivably affect the outcome" of the litigation directly at issue. *See Cleveland Hair Clinic, Inc., v. Puig,* 200 F. 3d 1063, 1067-1068 (7th Cir. 2000). Gableman violated this duty.

20. The Wisconsin Supreme Court recognizes the importance of SCR 20:3.3's duty of candor. "[A]n attorney's duty of candor toward the tribunal is central to the truth-seeking function of any court[.]" *In re Matter of Disciplinary Proceeding Against Kalal,* 2002 WI 45, ¶1, 252 N.W. 2d 261. *Accord In re Matter of Disciplinary Proceedings Against Bowe,* 2011 WI 48, ¶28, 334

N.W.2d 360; *see also In re Matter of Disciplinary Proceedings Against Kohler,* 2009 WI 24 ¶38, 316 Wis. 2d 17 ("[N]o attorney... may distort the truth when presenting argument to a court. All courts have a right to expect that the attorneys appearing before them, regardless of the zeal they have for their client's cause, will adhere to the fundamental duty imposed on them as officers of the court to speak honestly." *Id.*

21. Gableman's violations of SCR 20:3.3(a)(1) and SCR 20:3.3(d) also constituted violations of SCR 20:8.4(c), which prohibits conduct involving dishonesty, deceit, and misrepresentation.

22. Under SCR 8.4(c), dishonesty includes any conduct demonstrating a lack of fairness and straightforwardness or a lack of honesty, probity or integrity in principle. A lawyer who violates Rule 3.3(a)(1) violates Rule 8.4(c), as well. Douglas R. Richmond, *Appellate Ethics: Truth, Criticism, and consequences,* 23 Rev. Litig. 301, 309-310 (Spring 2004) (references to ABA Model Rules of Professional Conduct). Deceit involves concealing or misrepresenting the truth. Misrepresentation is defined in SCR 20:1.0(h):

> Misrepresentation denotes communication of an untruth, either knowingly or with reckless disregard, whether by statement or omission, which if accepted would lead another to believe a condition exists that does not actually exist.

2. Count 2.

23. Gableman also violated SCR 20:3.3(a)(1), SCR 20:3.3(d) and SCR 20:8.4(c) when, on the same day that he filed the

petition seeking an *ex parte* writ of attachment against the Mayor of Madison, he filed a petition with essentially identical false and misleading statements, seeking a similar writ against Green Bay's Mayor, Eric Genrich. (Compl. ¶ 140, Exhibit 9)

24. Like the Rhodes-Conway Petition, the Genrich Petition alleged that a subpoena was issued to Mayor Genrich, that the time and place for him to appear in response to the subpoena was continued until November 15, 2021, and that on that date he failed to appear "without justification." It attached the same exhibits as the Rhodes-Conway Petition, except substituting a subpoena to Mayor Genrich for the subpoena to Mayor Rhodes-Conway, and an October 21, 2021, email to the Green Bay City Attorney for the October 21, 2021, email to the Madison City Attorney. (Exhibit 9)

25. Green Bay, like Madison, received three subpoenas: one to the City Clerk, one to the Mayor, and one to the person most knowledgeable about the November 2020 election. (Compl. ¶¶ 81-82) Like in the Madison situation, Green Bay's attorneys negotiated an agreement under which the OSC agreed to hold off on depositions until it had a chance to review documents produced by the City. (Compl. ¶¶ 98-113, Exhibits 11-15) And, again like the situation involving Madison, on October 21, 2021, Gableman sent an email to Green Bay purporting to reschedule the "person most knowledgeable" deposition, not the deposition of Mayor Genrich. (Compl. ¶ 123-125, Exhibit 17)

26. As was the case in the Madison Petition, the Green Bay Petition falsely states that Mayor Genrich's deposition was

"unilaterally continued," that Mayor Genrich failed to appear for the rescheduled deposition "without justification," and misleadingly attaches Gableman's email purporting to reschedule the "person most knowledgeable" deposition as proof that the Mayor's deposition was rescheduled. (Compl. ¶¶ 142-144, Exhibit 9)

27. The Green Bay Petition, like the Madison Petition, also failed to inform the court of the extensive communications between the parties regarding the subpoenas to Green Bay and its officials. The following numbered paragraphs summarize those communications and the resulting agreements:

> 1. On October 7, 2021, Jeffrey Mandell, an attorney retained to represent the City of Green Bay and Mayor Genrich with respect to the subpoenas, called OSC and spoke to someone there. Mandell identified himself as one of the lawyers representing the City of Green Bay regarding the subpoenas to the City, the City Clerk and the Mayor. He said the City needed extensions with respect to all three subpoenas. OSC told him he would receive a call back later that day. He confirmed that conversation in an email to OSC. (Compl. ¶ 97, Exhibit 10)
>
> 2. On October 8, 2021, Mandell spoke by telephone with Andrew Kloster of OSC. Mandell told Kloster Green Bay considered the subpoenas invalid for several reasons, including that the subpoenas required appearances before the Special Counsel and not a legislative committee. Mandell also told Kloster that, although Green Bay was ready to go to court to pursue these objections, it preferred to discuss a compromise resolution. (Compl. ¶ 98)
>
> 3. Ultimately, Mandell and Kloster reached an agreement. The City of Green Bay agreed that it would, without waiving its objections to the

validity of the subpoenas, produce copies of all documents the City had previously produced in response to open records requests it had received relating to the November 2020 election, all City filings from litigation related to the election, and certain other public documents regarding the City's administration of the November 2020 election. In exchange, OSC agreed the City need not produce any witnesses to testify as scheduled by the subpoenas, that OSC would review the documents to be produced by Green Bay and that if, after receiving the documents, OSC decided to seek additional documents or testimony, it would provide Green Bay with the specific topics on which such documents or testimony was sought. (Compl. ¶¶ 99-100, Exhibit 11 at ¶¶ 5-7)

4. After reaching this agreement, Kloster emailed Mandell to "memorialize what we discussed." Kloster's email stated, among other things, that Green Bay had agreed to produce "all responsive communications you may reasonable produce by next Friday, October 15, specifically including but not limited to the open records productions you have already made" and that the person delivering the documents only needed to "sign in and confirm delivery of the physical copy." Kloster's email continued: "If and when we have follow-up questions or specific production requests pursuant to the subpoena, we are confident in your assurances that your office will continue to be as cooperative as you have already agreed to be." (Compl. ¶¶ 101-102, Exhibit 12)

5. Later that same day, Mandell responded to Kloster's email "to clarify some slight inaccuracies in [Kloster's] summary of [that morning's] conversation." Mandell stated they had agreed "the documents expected from the City were at this time limited to previously released public records request responses from the relevant time frame, with your office to follow up with any additional document requests after reviewing." Further, that "[y]ou confirmed that providing these documents by mail would be sufficient, and that the Clerk need not appear in person in Brookfield on 10/15. We discussed that you were unable to confirm

at this time that testimony was no longer requested on 10/22." Mandell concluded by stating "I understand that you reserve the right to make additional requests, and as I noted on the phone, we reserve all rights in response to any future requests." Neither Gableman nor anyone else from OSC responded to, or took issue with, Mandell's summary of the parties' agreement. (Compl. ¶ 103, Exhibit 13)

6. At about this same time, Gableman made statements to the press confirming the public officials he had subpoenaed would not need to appear at their depositions, but could simply provide him with copies of documents already produced in response to Open Records requests. (Compl. ¶ 104, Exhibit 14) Mandell read Gableman's public comments, and noted that they were consistent with the agreement he had reached with OSC. (Compl. ¶ 105)

7. On October 14, 2021, consistent with Mandell's and Kloster's earlier agreement, Law Forward transmitted a flash drive to OSC containing nearly 20,000 pages of documents relating to the November 2020 election. (Compl. ¶ 110, Exhibit 15) It included (a) all materials produced by Green Bay in response to election related Wisconsin Public Records Law requests between January 1, 2021 and September 30, 2021, (b) many of the record requests themselves (the remaining records requests were produced in supplemental productions), (c) filings made by the City in election related litigation, (d) a memorandum form the City Attorney to the Common Council, (e) minutes from the City's Ad Hoc Committee on Elections, and (f) minutes from meetings of the Common Council touching on election related subjects. (Compl. ¶ 122, Exhibit 15)

8. In the transmitter letter, a Law Forward attorney restated Green Bay's understanding of the agreement that, as a result of the document production: "[N]either further document production nor witness attendance is necessary at this time in response to the Special Counsel's inquiries of September 30 and October 6. In the event that the

Special Counsel at a later date seeks any additional documents from Green Bay or any of its officials, such a request should include information regarding specific topics on which information is sought, the timeframe to be covered by any testimony, and the venue and timing in which any testimony is requested." The transmittal letter also stated that the "City of Green Bay and its officials reserve all potential objections related to further requests for testimony or documents as well as all potential objections related to the Special Counsel's authority under governing law." (Compl. ¶¶ 112-113, Exhibit 15)

9. OSC never challenged, or even responded to, Law Forward's October 14 letter. But on October 20, 2021, an OSC attorney, Carol Matheis, emailed Vanessa Chavez, the Green Bay City attorney. The email identified the sender only as 3@wispecialcounsel.org and signed simply "Carol M." Green Bay's email system caught Matheis's email in its "spam" filter. The email stated "I am writing to follow up on the depositions scheduled for this Friday, October 22, 2021. I understand you have been in discussions with someone in our office to reschedule. We are looking to reschedule the PMK for Mayor's office and Clerk's office during the week of November 15. Please contact me to discuss at your earliest convenience." (Compl. ¶¶ 116-118, Exhibit 16 at ¶¶ 8-12)

10. On October 21, 2021, Gableman emailed Ms. Chavez. Gableman's email stated in part: "We have been trying to work with you in order to schedule the deposition of the person most knowledgeable as described in the Wisconsin State Assembly's subpoena of October 4, 2021… in order to provide our office with more time to review materials produced last week, as well as to give both parties additional time to reach an understanding of the scope and nature of the topics to be addressed, we are continuing the return date from Friday October 22, 2021 to Wednesday, November 17, 2021 at 9:30 a.m." (Compl. ¶ 123-125, Exhibit 17)

11. On November 19, 2021, Ms. Chavez discovered Carol M.'s October 20 email and Gableman's October

21 in her spam filter. (Compl. ¶ 133, Exhibit 16 at ¶ 9) A few days later, Daniel Lenz of Law Forward sent Gableman a letter informing him of Green Bay's discovery of the emails in Ms. Chavez's spam filter (the letter is dated November 19 but was not sent until November 23). (Compl. ¶¶ 134-135, Exhibit 18) Lenz told Gableman that "[w]e respectfully request that your office communicate directly with the attorneys at our office and our co-counsel at Stafford Rosenbaum and States United Democracy Center regarding your investigation and the City of Green Bay, and refrain from contacting the City or its employees directly."

12. Neither Gableman nor anyone else at OSC responded to Lenz's November 23 letter. (Compl. ¶ 136) Nor were there any other communications between OSC and Green Bay before November 29, 2021, when Gableman filed the Petition seeking a Writ of Attachment against Mayor Genrich. (Compl. ¶ 137)

28. As with the Madison Petition, the Green Bay Petition also failed to inform the Court about the pending litigation alleging that the subpoenas were invalid, and the upcoming court hearing in that case. (Compl. ¶¶ 148-150, Exhibit 9)

29. For the same reasons as set forth in the analysis relating to the Madison Petition, by filing the Green Bay Petition, Gableman violated SCR 20:3.3(a)(1), SCR 20:3.3(d) and SCR 20:8.4(c).

3. Count 3.

30. Gableman violated SCR 20:4.1(a), SCR 20:4.4(a) and SCR 20:8.4(c) when, on November 10, 2021, and again on December 1, 2021, he gave public testimony before the Assembly Committee on Elections and Campaigns. (Compl. ¶¶ 155, 162, Exhibits 19 and 20) On both occasions, Gableman intentionally made false public statements about the Mayors of Madison and Green Bay and failed

to disclose information in his possession that contradicted-or refuted entirely-false accusations he made against the Mayors.[2]

31. Part of Gableman's investigation sought to determine whether private grant money obtained by five Wisconsin cities--Green Bay, Kenosha, Madison, Milwaukee and Racine--had been misused by election officials. (Compl. ¶ 157, Exhibit 20 at MJG 1630) This is why Gableman issued the subpoenas to Madison and Green Bay officials that are discussed in Counts 1 and 2.

32. In his November 10 testimony, Gableman falsely accused the Mayors of Madison and Green Bay of participating in an "organized cover-up" and of "obstruction" of those subpoenas. Specifically, he testified that there was an "organized cover-up by Administrator Wolfe and others - as evidenced by the obstruction of the Assembly's subpoenas," and that his investigation had been hindered by "Ms. Wolfe's, WEC's and several cities' retention of a multitude of high-priced lawyers from both in and out of state for the purpose of obstructing the legislature's constitutional duty and right to find out what happened." (Compl. ¶¶ 158-159, Exhibit 15 at MJG 1621). These statements were false in two ways.

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[2] **SCR 20:4.1(a) states in pertinent part:** "(a) In the course of representing a client, a lawyer shall not knowingly: (1) make a false statement of a material fact or law to a 3rd person[s.]"

SCR 20:4.4(a) states in pertinent part: "(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay or burden a 3rd person[s.]"

SCR 20:8.4(c) provides: "It is professional misconduct for a lawyer to: ... (a) engage in conduct involving dishonesty, fraud, deceit or misrepresentation[s.]"

33. First, Gableman's assertion that WEC and the cities had hired "high-priced lawyers" was false, and Gableman knew it. Ms. Wolfe and WEC did not hire any outside lawyers; they were represented by the Wisconsin Department of Justice. Madison, Milwaukee, Racine and Kenosha were also represented by their respective City Attorneys, not outside counsel. Green Bay was the only entity represented by outside counsel, but that counsel was working on a pro bono basis. Gableman knew this. (Compl. ¶ 160)

34. Second-and more significant-Gableman's assertions that the Mayors were involved in a "cover-up," and were "obstructing" the subpoenas issued to them, were false. The conduct of the Mayors cannot reasonably be called a cover-up or obstruction. As described in detail in the discussion above relating to Counts 1 and 2, lawyers for both Madison and Green Bay contacted OSC within days after being served with subpoenas. They negotiated agreements with OSC obligating the cities to produce tens of thousands of pages of documents. And, within a matter of days, both cities fully complied with those obligations. As a result, at the time of Gableman's November 10 testimony both cities had done everything OSC had asked them to do, and OSC (in Madison's case, Gableman himself) had agreed that depositions of the Mayors would not be necessary. Gableman's claims about a cover-up and obstruction had no basis.

35. Gableman's December 1 testimony, which escalated his attacks on Mayors Rhodes-Conway and Genrich, is even more troublesome. In this testimony, Gableman not only repeated his

false claims that the Mayors ignored subpoenas directed to them and failed to appear for depositions they were required to appear at, he also made untrue and unwarranted claim about why the Mayors were allegedly obstructing the subpoenas and not appearing at depositions. (Compl. ¶¶ 170-179, Exhibit 20 at MJG 1631-1632)

36. For example, Gableman testified that the two Mayors "simply failed without reason or excuse to appear for their depositions and answer questions about how and to what extent they allowed Mark Zuckerberg's employees to plan and administer their cities' election in November 2020." (Compl. ¶ 172)

37. As shown above, the premise of this statement is false. Neither Mayor failed to appear at a deposition scheduled for them. There was no legitimate reason for Gableman to make such false statements.

38. Gableman cannot contend that the claim that the Mayors obstructed anything and ignored subpoenas to them was justified because the cities did not produce witnesses to appear at the "person most knowledgeable" depositions he had "unilaterally" continued. First, these were not subpoenas requiring the Mayors to appear; they were subpoenas to the cities requiring the cities to produce a person most knowledgeable witness. Second, the cities did not ignore the subpoenas as pointed out above. Gableman's emails seeking to continue these depositions explicitly stated that the additional time would be used by the OSC to review the documents produced by the cities and then "give the parties additional time to reach an understanding of the scope and nature of the topics to be addressed in the

deposition[s]." But Gableman did absolutely nothing to even start a process to reach such an understanding, even though he was explicitly reminded of his promise to do so by Madison's City Attorney. (Exhibit 7)[3] In short, the "person most knowledgeable" depositions were not "obstructed" by anyone. The ball was in Gableman's court and he simply dropped it.

39. But even more problematic than the false premises about ignoring subpoenas is Gableman's testimony that the reason why the Mayors had allegedly obstructed the subpoenas was because they were trying to hide "wrongdoing" on their part. (Compl. ¶¶ 170-179, Exhibit 20 at MJG 1631-1632) For example, Gableman testified that "Eric Genrich and Satya Rhodes-Conway have chosen to ignore the subpoenas issued by the Wisconsin Assembly because they have no intention of answering uncomfortable questions about how they ran their elections and what they did with the millions of dollars of Zuckerberg money they took..." (Compl. ¶ 175, Exhibit 20 at MJG 1631)

40. This assertion about the Mayors not wanting to answer questions about how the cities had run their elections and how

[3] As Gableman's own October 21 emails implicitly acknowledge, there was a need for OSC to provide more information about specific topics and logistics before the "person most knowledgeable" depositions could proceed. In order to provide a "person most knowledgeable" witness, the entity being subpoenaed needs to know what topics that witness is to be knowledgeable about. The subpoenas did contain a list of 8 topics, but several of these were extremely broad (example: "The 2020 election conducted in the City of Madison). (*See* Exhibits 23 (OLR 596-603) and 24 (MJG 613-620).) More information about the logistics of the depositions was needed because there was a substantial question about whether OSC had the legal authority to issue a legislative subpoena requiring a witness to appear in private before the Special Counsel, as opposed to appearing in public before the Legislature or one of its committees. At the time of Gableman's testimony the Department of Justice had taken the position that the legislative subpoenas were invalid for this, and other, reasons, and brought a lawsuit seeking to block the subpoenas to the WEC. (Compl. ¶¶ 93-96, Exhibit 8, Exhibit 25 (MJG 1469-1477).) Also, Gableman had a memo from the Legislative Reference Bureau noting that a strict reading of the statute authorizing legislative subpoenas requires that the witness appear before a legislative committee (but also observing that a court "may refrain" from interfering with the process selected by another branch of government). (Exhibit 26 (MJG 1626-1629).)

the grant money they received was spent was untrue. At the time Gableman gave this testimony both Madison and Green Bay had produced thousands of pages of documents detailing how the elections in their cities were run, exactly how much money each city received in grants from the CTCL, and exactly how that money was spent. (Compl. ¶ 172) When Gableman finally submitted a report on March 1, 2022, he included a detailed analysis of the CTCL grants, showing exactly how much grant money Green Bay, Madison and other cities received and, down to the penny, what that money was spent on. (Exhibit 21 (MJG 1177-1312) at 1195-1216) All this information was in the documents produced by the cities weeks before Gableman's December 10 testimony - in part because the grants themselves requires the cities to report on how the money was spent. (Compl. ¶ 172, Exhibit 22 at p.7)

41. In fact, before Gableman had even issued his subpoenas, the Wisconsin Institute for Law and Liberty (WILL) had already published its own report detailing, based on responses to open records requests to the cities, how much each city had received from the CTCL grants and how they had spent the money. (*See* WILL Report Exhibit 22). So Gableman's claim that Mayors Rhodes-Conway and Genrich "had no intention of answering uncomfortable questions...about what they did with the millions of dollars of Zuckerberg money they took" is simply false, the Mayors had in fact already answered those questions.

42. Following this disturbing pattern of falsely accusing the Mayors of ignoring their subpoenas and then attributing that falsely alleged conduct to a plot to hide wrongdoing, Gableman

went on to make the following *verbatim* statements to the Committee:

> 1. Reasonable minds might wonder whether the millions of dollars each of these Mayors received from the Zuckerbergs might have induced them to do something other than treat all candidates fairly and impartially and whether those Mayors used the Zuckerberg money to get out the vote for Joe Biden…
>
> 2. Rather than be held accountable for his partisan efforts, Mayor Genrich has chosen to hire three law firms who – it is reported – have donated their services. All three law firms who are donating thousands and thousands of dollars' worth of free legal services to Eric Genrich share his partisanship. Whatever costs are borne of this cover up will, again, be paid for by the taxpayers…
>
> 3. Let's talk about cover-ups because that is exactly what the Wisconsin Election Commission, its administrator Meaghan Wolf, and Mayors Genrich and Rhodes-Conway are engaging in. They are trying to run and hide from accountability to the citizens they are supposed to serve. Why go through all this legal evasion, maneuvering, and expense unless they do not want the public to know what they have done…
>
> 4. ...the commonality of Eric Genrich, Satya Rhodes-Conway, Mark Spreitzer, Lisa Subek, and Jody Emerson is that in November 2021, they all wanted Donald Trump to lose and Joe Biden to win. And they have no interest in exposing themselves or each other's wrongdoing to public accountability.

(Compl. ¶¶ 174-178, Exhibit 20 at MJG 1630-1632)

43. Gableman's testimony not only made these false statements about the Mayors, it also failed to tell the committee about how the Mayors and their cities had responded to the legislative subpoenas. As detailed in the discussion of Counts 1 and 2, rather than "obstructing" OSC, lawyers for both cities

cooperated with OSC and negotiated agreements, deemed satisfactory to OSC, requiring the cities to produce tens of thousands of pages of documents. Both cities fully complied with those agreements, and produced documents which, among other things, showed exactly how much money each city had received in CTCL grants and what the money was used for. One of the OSC lawyers, Andrew Kloster, even complimented Madison on its cooperation in responding to the subpoenas. (Exhibit 4) Gableman failed to tell the Committee (and the public) any of this.

44. Gableman's singling out of Mayors Rhodes-Conway and Genrich by claiming that "of all the clerks and of all the Mayors, those two simply failed without reason or excuse to appear for their depositions…" is also false because the responses of Madison and Green Bay did not differ materially from the responses of Kenosha, Racine and Milwaukee. This can be seen by comparing the correspondence between the OSC and the attorneys for the other cites. (*See* Exhibits 82 and 83 (Kenosha), Exhibits 84 and 85 (Racine) and Exhibit 86 (Milwaukee))

45. Gableman's statements at the November 10 and December 1 hearings were material. "A statement is material for purposes of Rule 4.1(a) if it could or would influence the hearer." Annot. Mod. Rules Prof. Cond. sec. 4.1, *citing In re Merkel*, 138 P.3d 847, 850 (Or. 2006). Mayors Rhodes-Conway and Genrich were both elected public officials. Gableman gave his false testimony at a well-publicized legislative hearing. Statements accusing the Mayors of "obstruction," "trying to run and hide from

accountability" and "wrongdoing" are certainly material to the Mayors and their constituents.

46. As one commentator has stated:

> In its simplest application, Rule 4.1(a) merely codifies a simple proposition: although lawyers are supposed to be zealous partisans of their clients, they must draw the line at lying. The law generally and all lawyer codes of conduct have always been clear that a lawyer may not make misrepresentations to a court, a client, or to a third person. Rule 4.1(a) recodifies the traditional rule that a lawyer's word is his bond.

Geoffrey C. Hazard, Jr. & W. William Hodes, *The Law of Lawyering* § 37.2 (3d ed. 2000).

47. SCR 20:4.4(a) provides that "[i]n representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a 3rd person[.]" These false statements served no legitimate substantial purpose. They served only to politically and publicly embarrass the Mayors, generate more public support for expanding the scope and time frame of Gableman's investigation, and provide an excuse for Gableman's failure to complete the investigation and submit a final report in the time frame set forth in his contract.

48. Gableman's intention to embarrass and burden the Mayors is furthered evidenced by his decision to file the petitions ex *parte*. As a result, at the time Gableman gave his December 1 testimony neither of the Mayors, or their attorneys, were aware

of the petition and had no way of timely responding to questions about them. (Compl. ¶ 164)

49. A Wisconsin commentator has noted that:

> SCR 20:4.4 limits the zeal with which lawyers may represent their clients… The prohibition against using "means that have no substantial purpose other than to embarrass, delay, or burden a 3rd" encompasses verbal abuse, threats, and offensive actions. A lawyer's substantial permissible purpose in engaging in potentially questionable behavior, however, can be a defense only insofar as it justifies the specific behavior. In addition to being disciplined for violating this rule, lawyers also have been sanctioned in court.

Aviva Meridian Kaiser, *Respecting Privileged Information: Lawyers' Obligations to Third Persons,* 90-APR Wis. Law. 28, 29 (April, 2017).

50. The Legislature had every right to investigate the conduct of elections in Wisconsin, and to hire a lawyer to assist in that investigation. That lawyer had every right to investigate and to testify about his or her findings and conclusions. But that lawyer--Gableman--had no right to be untruthful.

51. "Courts are entitled to expect strict compliance with an attorney's fundamental duty to adhere to the truth." *Bowe,* 2011 WI 48, ¶ 29. Lawyers who ignore that duty--as did Gableman--ill-serve their clients and damage the legal profession. *Id.*

4. Count 4.

52. Gableman violated SCR 20:3.4(c) and (d), SCR 20:3.5, SCR 20:8.4(g), and SCR 40:15 by deliberately disobeying an order

of the court, and by engaging in disruptive behavior at a court hearing before Judge Remington on June 10, 2021. [4]

53. In late 2020, American Oversight--a public interest law firm--sued OSC, alleging that OSC had inappropriately withheld documents from its response to American Oversight's open records requests. *American Oversight v. Assembly Office of Special Counsel, et al.* Dane County Case No. 21-CV-3007. (Compl. ¶ 185, Exhibit 87)

54. Circuit Court Judge Frank Remington ordered OSC to file the withheld documents under seal so he could review them *in camera*. (Compl. ¶ 185, *see also* Exhibit 27 at MJG 1639-1640) After reviewing the documents and considering the parties' briefs, Judge Remington rejected all of the arguments OSC made for withholding the documents, and issued an order unsealing them. (Compl. ¶¶ 186-187; *see also* Exhibit 28) Judge Remington also found that OSC acted "arbitrarily and capriciously" in withholding the documents, and he assessed punitive damages against OSC. (Compl. ¶ 188, Exhibit 28 at MJG 1691)

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[4] **SCR 20:3.4 provides**: "A lawyer shall not: (c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists."

SCR 20:3.5 provides: "A lawyer shall not: (d) engage in conduct intended to disrupt a tribunal."

SCR 20:8.4(g) provides: "It is unprofessional conduct for a lawyer to: (g) violate the attorney's oath[s.]"

SCR 40:15 provides: "I will maintain the respect due to courts of justice and judicial officers[s.]"

55. When American Oversight reviewed the previously withheld documents, it realized there were several more requested documents that must exists, but were not part of the production made to Judge Remington for his *in camera* inspection. (Compl. ¶ 192) American Oversight brought this to OSC's attention. (Compl. ¶ 193, Exhibit 29) An OSC attorney responded, acknowledging that some responsive documents had not been produced in response to Judge Remington's order, and calling the failure "inadvertent." (Compl. ¶ 194, Exhibit 30 at MJG 1700)

56. The OSC attorney also told American Oversight that some documents that would have been responsive to the requests were not produced because they had been deleted or destroyed. He explained that some of the deletion/destruction occurred because when OSC received an open records request it made hard copies of any electronic versions of responsive documents, such as emails, and then deleted the electronic version. However, when OSC did this, attachments to the electronic version were not always copied, and thus were deleted along with the electronic document. (Compl. ¶¶ 195-196, Exhibit 30 at MJG 1703-1705) Additionally, some documents were deleted or destroyed because OSC's policy was to not retain documents referring to matters that OSC was "not intending to further investigate," and was "not intending

to rely upon for its recommendations or reports." (Compl. ¶ 197, Exhibit 30 at MJG 1702)

57. When American Oversight learned of the destruction of documents it responded by filing a motion asking Judge Remington to modify his March 2nd order to provide American Oversight with additional relief, and to schedule further proceedings to consider the possibility of contempt findings. (Compl. ¶ 199, Exhibit 76) Judge Remington scheduled an evidentiary hearing on American Oversight's motion for June 10, 2022, and established a schedule for pre-hearing activities such as discovery and briefing. (Compl. ¶¶ 199-200, Exhibit 31)

58. Prior to the hearing, OSC conceded that it had not complied with Judge Remington's initial order to produce all responsive documents, but contended that this failure was "inadvertent." (Compl. ¶ 202, Exhibit 32 at MJG 50) It also contended that any additional responsive documents that still existed had now been produced. (Compl. ¶ 203)

59. At the start of the June 10 evidentiary hearing OSC's lawyer requested an adjournment because the witness OSC intended to call was not available. (Exhibit 32 at MJG 35-46) Judge Remington denied the motion and allowed American Oversight to call Gableman as a witness. (Compl. ¶ 203-204, Exhibit 32 at MJG 46-48)

60. The June 10 evidentiary hearing received extensive press coverage, including reporters with television cameras and microphones. (Compl. ¶ 205) Gableman's testimony appears at Paragraph 206 of the *Complaint*, and at pages MJG 63-MJG 68 of Exhibit 32, and is quoted in full below.

MS. WESTERBERG: Good morning. Would you please state your name for the record.

MR. GABLEMAN: Good morning.

MS. WESTERBERG: Would you please state your name for the record.

MR. GABLEMAN: Michael J. Gableman.

MS. WESTERBERG: Thank you. And I'm Christa Westerberg, attorney for American Oversight.

MS. WESTERBERG: You are the president of Consultare, LLC; is that correct?

MR. GABLEMAN: Yes.

MS. WESTERBERG: And am I pronouncing it correctly, Consultare?

MR. GABLEMAN: Sure. And you know, I found out about this hearing by means of subpoena served at my home at 11:00 Sunday morning. On Wednesday we had a hearing to quash that warrant—

THE COURT: Is there a question?

MS. WESTERBERG: I'm going to object and move to strike.

MR. GABLEMAN: -- on the advice of my counsel and under my firm belief that this judge has abandoned his role as a neutral magistrate and is acting as an advocate; also knowing, Judge Remington, that Meagan Wolfe, the executive director of the Wisconsin Election Commission, successfully resisted my

subpoena in a Madison courtroom based on personal constitutional rights. So on Wednesday when the Judge starts telling my office that if I were you, I'd get a lawyer because you could go to jail, all of a sudden I somehow think that my personal rights are at stake too.

THE COURT: Mr. Gableman—

MR. GABLEMAN: Yes, Judge Remington.

THE COURT: -- you have had a long and storied career serving the public, both - let me finish, please.

MR. GABLEMAN: Sure. If you'll let me finish.

THE COURT: No.

MR. GABLEMAN: Okay.

THE COURT: This is my courtroom.

MR. GABLEMAN: Right.

THE COURT: You had a courtroom in Burnett County.

MR. GABLEMAN: I did.

THE COURT: You had a courtroom in the east wing of the State Capitol. I do not need to tell you how I expect you to control yourself and the behavior that I expect of a witness on the stand. No question has been asked of you. You are not given the opportunity to make a speech and to make a statement.

MR. GABLEMAN: Uh-huh (affirmative).

THE COURT: Let me ask you this. Do you have a -- do you have a lawyer?

MR. GABLEMAN: I do not have a personal counsel.

THE COURT: All right. At which time you acquire a lawyer, your lawyer will be able to make

legal argument on your behalf. Go ahead and ask your next question, Ms. Westerberg.

MR. GABLEMAN: You have a right to conduct and control your courtroom, Judge. But you don't have a right to act as an advocate for one party over the other. I want a personal counsel - if you are putting jail on the table, I want a persona - I want an attorney to represent me personally. I will not answer any more questions.

I see you have a jail officer here. You want to put me in jail, Judge Remington? I'm not gonna be railroaded. At 10:14 - it's now 10:19

-- I thought the only issue at play in this whole thing was 97 documents that we were late getting over to Ms. Westerberg. And the whole question is should we be held in contempt and should someone go to jail because we were late getting those documents that are in your own file. Now, at 10:14, I find out when you say let me tell you what the issues are in this case, and now I find out -

THE COURT: Mr. Gableman -

MR. GABLEMAN: -- your intent is to let her do a fishing expedition.

THE COURT: Mr. Gableman -

MR. GABLEMAN: No more. I'm silent.

THE COURT: You have the right to refuse to answer questions. You have a right to be silent. I will not ask you again that I request-

MR. GABLEMAN: I invoke those rights.

THE COURT: Do you have any other questions, Ms. Westerberg?

MS. WESTERBERG: If the witness isn't going to answer any other questions, then I'll -- I guess I'll get that on the record. Do you intend to any answer any of my other questions, Mr. Gableman?

MR. GABLEMAN: I invoke the rights the Honorable Judge Remington just recited.

THE COURT: What rights are those, Mr. Gableman? Is it the Fifth Amendment right to not answer questions?

MR. GABLEMAN: It's the right to silence guaranteed to me under the United States Constitution, Judge Remington, the State of Wisconsin Constitution and all cases interpreting the same.

THE COURT: Okay. Thank you. You may step down.

MR. GABLEMAN: Thank you.

61. SCR 20:3.4(c) prohibits lawyers from disobeying court orders. The hearing transcript makes clear, Judge Remington ordered Gableman to refrain from making speeches and to "control yourself," but Gableman disobeyed that order and continued to make speeches rather than answer questions. (Exhibit 32)

62. Gableman apparently considered Judge Remington's decision to allow opposing counsel to call him as a witness improper. But that does not justify a refusal to obey the Judge's order. A judge's actions – even if improper – do not excuse a lawyer's violation of the Rules. *See, e.g., Office of Disciplinary Counsel v. Mills,* 755 N.E. 2d 336, 338 (Ohio 2001) ("[E]ven if [the magistrate or opposing counsel] had acted

improperly, the appropriate response is not to retaliate with a temper tantrum").

63. SCR 20:3.5(d) prohibits lawyers from "engag[ing] in conduct intended to disrupt a tribunal." Gableman's conduct also violated this rule. As a former circuit judge -- familiar with rules of courtroom procedure and decorum--Gableman surely knew that responding to direct questions put to him by opposing counsel with unresponsive narrative answers that attacked Judge Remington and accused him of judicial bias and unfair treatment; and refusing to follow Judge Remington's orders to refrain from speechmaking, would disrupt the proceeding.

64. Not only were Gableman's words disruptive but, as explained in Judge Remington's written order, "[t]he transcript of these events does not tell the whole story. It does not show Gableman's raised voice, his accusatory tone and his twisted facial expression. It does not show that as he spoke, he pointed and shook his finger at the judge." (Exhibit 35 at MJG 21)

65. Gableman's conduct at the hearing also violated the Attorney's oath, SCR 40.15, which requires attorneys to maintain the respect due to courts of justice and judicial officers. His failure to do so constitutes a separate act of professional misconduct under SCR 20:8.4(g).

66. Disciplinary rules that address disruptive behavior "enforce the standards of decorum and courtesy necessary to

promote and maintain an orderly system of justice in which people can have confidence when their rights and obligations are at stake." *Office of Disciplinary Counsel v. Breiner*, 969 P.2d 1285, 1291 (Hawai'i 1999). Disruptive behavior by lawyers in court undermines public confidence in the justice system. It delays the proceedings and diverts attention from the issues in controversy. *See also Matter of Crumpacker*, 383 N.E.2d 36, 50 (Ind. 1978) ("Discourteous and undignified behavior detracts from the orderly process of dispute resolution and clearly falls outside an acceptable level of attorney conduct"); *In Matter of Disciplinary Proceedings Against Eisenberg*, 144 Wis. 2d 284, 302, 423 N.W.2d 867 (1988) ("An attorney must expect to encounter 'the heat of battle' in the practice of law and, accordingly, take appropriate care in the choice of vocabulary and demeanor addressed to the court [and] opposing counsel").

67. Lawyers may professionally disagree with and challenge a judge's ruling. Acceptable methods for doing do include petitions for leave to appeal nonfinal orders, appeals from final orders and judgments, and motions to disqualify a judge for bias. Gableman's lawyers pursued all of these options. But Gableman's behavior on the witness stand, where he deliberately disobeyed Judge Remington's order to simply answer questions and stop making speeches, violated the Rules of Professional Conduct.

68. Gableman's conduct resembles the type of misconduct found in *In Disciplinary Proceedings Against Sommers*, 2012 WI 33, 339 Wis.2d 580, 811 N.W.2d 387 (2012). There, a criminal defense attorney, upset by unfavorable rulings by the trial court, accused the judge of bias, collusion with the prosecutor, and running a "kangaroo court." The Supreme Court upheld the referee's finding that this conduct violated SCR 20:3.4(c), SCR 20:3.5(d), SCR 20:8.4(g) and SCR 40:15, irrespective of the merits of the lawyer's objections to the unfavorable rulings.

5. Count 5.

69. Gableman violated SCR 20:8.2(a), 20:8.4(g) and 40:15 by making statements about the integrity and alleged bias of Judge Remington that Gableman knew to be false, or acted in reckless disregard as to the truth or falsity of the statements.[5]

70. Gableman violated SCR 20:8.2(a) in his testimony at the June 10, 2022, evidentiary hearing. In that testimony he accused Judge Remington of "abandon[ing] his role as a neutral magistrate," "acting as an advocate," and attempting to "railroad" Gableman. (Exhibit 32) Gableman also violated the rule during a brief recess in the proceeding when, fully aware that the microphone in front of him was "live" and transmitting his

[5] **SCR 20:8.2(a) provides**: "(a) a lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory office or public legal officer[s.]"

SCR 20:8.4(g) provides: "It is unprofessional conduct for a lawyer to: (g) violate the attorney's oath [.]"

SCR 40:15 provides: "I will maintain the respect due to courts of justice and judicial officers[s.]"

comments to the entire courtroom and press, he accused Judge Remington of being "not interested in right or wrong" and mocking him for allegedly colluding with opposing counsel. (Compl. ¶ 211, Exhibit 33) And Gableman violated the rule again when he spoke to the press after the hearing had concluded and accused Judge Remington of "abandon[ing] his neutral role and [becoming] virtually lead counsel". (Compl. ¶ 216, Exhibit 34)

71. Gableman's testimony at the hearing has already been set forth in the above discussion of Count 4 and in Paragraph 206 of the *Complaint*. His comments during the recess are set forth in Paragraphs 209-211 of the *Complaint* and set forth in Exhibit 33 and here (Stadler is an attorney who participated in the hearing representing Assembly Speaker Vos):

MR. GABLEMAN: This is his -- you know, this is his time to shine.

MR. STADLER: Yeah.

MR. GABLEMAN: You know, this is his -- -- what passes for success for him.

MR. STADLER: He -- (Audio cuts out.)

MR. GABLEMAN: Finally, somebody's -- you know what? I enjoyed it when people interrupted me, because I don't need people to tell me how right I am. I need - I need them to tell me when I'm wrong or if I'm wrong.

MR. STADLER: Let me figure out how to get around it.

MR. GABLEMAN: But -- but that's where his advocacy comes in. He's not interested in right or wrong.

MR. STADLER: He's Westerberg with a beard.

MR. GABLEMAN: Yes. You work as -- That's what you were saying, right, Ms. Westerberg? Oh, yes. Why don't you come right up to the bench, Ms. Westerberg? Why -- why don't you come back into my chambers so you can dictate what -

(Mr. Stadler taps the microphone.)

MR. GABLEMAN: I know. I don't care. It's the truth. When I had a courtroom, I never acted like that. Jesus. I -- I hope I never made a litigant feel like he has. I hope. I hope I never did. I don't believe I did. I tried. I tried to be fair. Not like this.

72. Gableman's comments to the press are in Exhibit 34 and set forth in Paragraph 216 of the *Complaint* and here:

> ... and I gotta tell you I have real concerns. This Judge Remington seems like a very nice person. He does, and he seems very patrician and very elegant. But I don't think I have ever seen a judge abandon his neutral role and become virtually lead counsel. He comes up with ideas and then he turns to Miss Westerberg to ask her to endorse his theories about how to proceed against me. The deck, the deck was stacked. I did not know what I was here to answer for - that's not fair. And when I ran a trial - he's right yes, I was a Circuit Court judge for six years. I ran a courtroom. I did trials, but I'll tell you what, I did everything I could under my oath to God that I took in front of all the public to treat people fairly and to not be biased. No, if I ever made anyone feel in my courtroom, and I pray to God I did not. If I ever make, made anyone feel the way that Judge Remington is making us feel about how biased he is, I apologize before God and my fellow citizens, because I have devoted my career. I didn't go into private practice. I devoted my career first as a prosecutor, and then as a judge, and then on the state Supreme Court, and I took pride in tried. We are all human. Did I ever fail? Did I ever make mistakes? Of course I did, but I never intentionally joined the legal team of one party over the other and in my candid honest view, that is what has occurred here and so I'm gonna push back because - I'm gonna push back - it's not right. Yes sir...

> ...I promise to answer your question. And our friends over there from American Oversight were also present at the Wednesday hearing and if they're honest they'll agree with me that Judge Remington's recitation of how he brought up the whole jail issue is not comprehensive. I believe he advised the young guy who works in my office that if it were him, Judge Remington, that he would get a personal lawyer. It wasn't just this neutral - whatever the exact words were -it wasn't just this neutral recitation of "oh by the way there's a possibility," and if that was his intent, if that was his intent, that kind of warning always comes at the beginning - the absolute beginning of a proceeding. It doesn't just pop up in the midst of some heated exchange out of the blue where a judge starts talking about jail. "Now I'd a lawyer if I were you because it sure looks like the OSC is trying to push off blame to you." Here's something - they're recording me. I know. I take responsibility for what occurred in my office. So I, I please check it out. It's, it's on Wisconsin Eye from Wednesday what time did it start Miss Westerberg, on Wednesday?...

73. Gableman's claim that Judge Remington was biased is based on Judge Remington's judicial rulings and the way he administered his courtroom. But the presence of impermissible judicial bias is a legal determination, ultimately made by reviewing courts, not by disgruntled attorneys.[6] Adverse rulings and efforts to secure courtroom discipline rarely support findings of bias, partiality, and favoritism. *In Matter of Disciplinary Proceedings Against Nora*, 2018 WI 23, ¶ 35, 380 Wis. 2d 311, 909 N.W.2d 155.

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[6] OSC initially appealed four of the rulings made by Judge Remington prior to Gableman's June 10 testimony, but after briefing was completed dropped its appeal of the Judge's ruling that OSC's response to the open records were arbitray and capricious. The Court of Appeals rejected two of the OSC's remaining arguments, concluding that Judge Remington did not err in treating American Oversight's April 2022 motion as a motion for contempt, and also did not err in determining that American Oversight had made a prima facie case for contempt. *See American Oversight v. Assembly Office of Special Counsel, et al.*, Nos. 2022AP1030, 2022AP1290, and 2022AP1423, ¶34 (Dist. II, Wis. Ct. App., December 26, 2024). The Court of Appeals did conclude Judge Remington erroneously exercised his discretion when he denied OSC's motion to adjourn the hearing. *Id.* ¶35. It did not decide OSC's other claims of error.

74. Similarly, critical statements based on a judicial officer's consideration of a litigant's arguments or evidence, or the officer's experience with a litigant during a proceeding, are usually not sufficient to demonstrate bias on behalf of the presiding judicial official. *See, e.g., Liteky v. United States*, 510 U.S. 540, 555, 114 S. Ct. 1147, 127 L.Ed.2d 474 (1994)

> First, judicial rulings alone almost never constitute a valid basis for a bias or partiality motion.... Second, opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible. Thus, judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge.

75. With particular application here, *Nora* also reminded lawyers that "[a] lawyer's fight for any cause, however noble one might think it to be, must be conducted within the ethical rules that govern the lawyer's conduct."). *Id.*, ¶ 41. As a former circuit judge and Supreme Court Justice, Gableman surely knew this.

76. The rules Gableman violated don't exist to protect judges, but to help maintain public confidence in the administration of justice and the fairness of the judicial system. "[E]thical rules that prohibit attorneys from making statements impugning the integrity of judges are not to protect judges from unpleasant or unsavory criticism. Rather, such rules are designed to preserve public confidence in the fairness and

impartiality of our system of justice." *Fla. Bar v. Ray*, 797 So. 2d 556, 558-59 (Fla. 2001), *cert. denied*, 535 U.S. 930 (2002). *See also Kentucky Bar Assn v. Waller*, 929 S.W.2d 181, 183 (Ky. 1996) (disrespectful language directed at judge is not sanctioned because "the judge is of such delicate sensibilities as to be unable to withstand the comment, but rather that such language promotes disrespect for the law and for the judicial system"), *cert. denied*, 519 U.S.111 (1997).

77. The public generally believes attorneys have unique insights into the judicial system. That is why subjective, unsubstantiated criticisms of a judge's integrity like Gableman's, threaten public confidence in the judicial system. The threat becomes more concerning when Gableman's professional history and the inferred *gravitas* of his title—Special Counsel—factor into the equation.

78. Wisconsin lawyers owe a duty to preserve the respect and integrity of the judicial system and the legal profession, even when facing circumstances they consider unfair. Gableman intentionally chose to present his disagreement and criticisms in a manner that brought disrepute on the legal system in general, and on Judge Remington in particular. That violated SCR 20:8.2(a); SCR 20:8.4(g); and SCR 40.15.

6. Count 6.

79. Gableman violated SCR 20:8.4(g) and SCR 40:15 by making demeaning and derogatory public statements about opposing

counsel during the recess in the June 10 hearing before Judge Remington.[7]

80. Gableman's comment mocking Judge Remington during the recess in the June 10 hearing was also unprofessional conduct because it demeaned his opposing counsel. During an exchange with another lawyer, while Gableman knew his microphone was on and others in the courtroom could hear his comments, Gableman attempted to mock Judge Remington by saying:

> MR. GABLEMAN: Yes. You work as -- That's what you were saying, right, Ms. Westerberg? Oh, yes. Why don't you come right up to the bench, Ms. Westerberg? Why -- why don't you come back into my chambers so you can dictate what -

(Compl. ¶ 211, Exhibit 32)

81. In his written decision after the hearing, Judge Remington found Gableman's comments constituted "an affront to the judicial process and an insult to Attorney Westerberg, by their very suggestion that she is not capable of litigating without the help of the judge. The sophomoric innuendo about Attorney Westerberg coming back to chambers is a sad reminder that in 2022, women lawyers still have to do more than be excellent at their job." (Compl. ¶ 214, Exhibit 35 at MJG 22)

82. That analysis is sound. While Gableman's comment seems primarily aimed at mocking Judge Remington, it also attacks his opposing counsel, Christa Westerberg's, integrity and

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[7]**SCR 20:8.4(g) provides**: "It is unprofessional conduct for a lawyer to: (g) violate the attorney's oath[s.]"

SCR 40:15 provides, in part: "...I will maintain the respect due to courts of justice and judicial officers[s.]... I will abstain from all offensive personality[s.]"

competence. His ridicule reduced Westerberg to someone whose only role was to aid Judge Remington in his bias. By casting Westerberg in that role, Gableman demeaned her and denied her the dignity owed to a lawyer competently representing her client.

83. In his response to Judge Remington's grievance, Gableman tried to justify his conduct by saying he was "mimic[ing] the unabashed favoritism [Judge Remington] had shown to American Oversight's counsel." (Exhibit 36 at MJG 104). Gableman described his insulting comments as "a comparatively modest caricature borne of exasperation...." (*Id.*)

84. Trying to diminish the unprofessionalism of this conduct by characterizing it as "a comparatively modest caricature" does Gableman no good. What purpose did his conduct serve, other than to insult Judge Remington and bully, insult, and humiliate attorney Westerberg? It certainly contributed nothing toward resolving any of the issues before the court.

85. As the United States Supreme Court has observed:

> All persons involved in the judicial process—judges, litigants, witnesses, and court officers—owe a duty of courtesy to all other participants. The necessity for civility in the inherently contentious setting of the adversary process suggests that members of the bar cast criticisms of the system in a professional and civil tone.

In re Snyder, 472 U.S. 634, 647 (1985).

86. Gableman's comments regarding Westerberg were neither professional nor civil. They were offensive, and failed to maintain the respect due her as an officer of the court. As such, they constitute misconduct.

87. The Wisconsin Supreme Court has stressed the importance of requiring attorneys to show the respect for the judicial system and its participants required by the Attorney's oath. *See, e.g., State v. Eisenberg,* 48 Wis. 2d 364, 380-81, 180 N.W.2d 529 (1970):

> License to practice law in this state is granted on implied understanding that an attorney shall at all times demean himself in proper manner and refrain from such practices which bring disrepute upon himself, the profession and the courts. This implied understanding is also affirmed by the oath taken by the attorney on admission to practice.

88. Gableman's comments illustrate his "lack of respect for the court system, his refusal to abide by general rules of fair play or specific rules governing the legal system when it suits him, his lack of concern for the rights and reputations of others, and his disregard of the obligations imposed upon him as a person licensed to practice law." *In the Matter of Disciplinary Proceedings Against Pangman,* 216 Wis. 2d 440, ¶35, 574 N.W. 2d 232 (1998). His claim that he was just engaging in mimicry because he was exasperated with Judge Remington not only "reflected adversely on [his] professional judgment and fitness to be a member of the legal profession, but also reflected adversely on the reputation and integrity of the legal profession generally." *Matter of Disciplinary Proceedings Against DeLadurantey,* 406 Wis. 2d 62, ¶51, 406 Wis.2d 62, 985 N.W.2d 788.

7. Count 7.

89. Gableman violated SCR 20:1.1 by failing to provide competent representation. He contracted to serve as Records

Custodian for OSC, but failed to adopt and implement policies in compliance with Wisconsin's Records Retention and Open Records Laws.[8]

90. The First Amendment to the Coordinating Attorney Agreement listed as one of its purposes "to confirm that Gableman shall act as the Custodian of Records with regard to the investigation that is the subject of the IC Agreement." (*Complaint* ¶ 220, Exhibit 37 at MJG 538 ¶ B)

91. This provision was important. Vos anticipated the investigation would generate a significant number of open records requests. And he was right. By the time the First Amendment was signed, OSC had already received four open records requests. (Compl. ¶ 221, Exhibit 38)

92. On October 1, 2021, the Legislative Council issued a memo advising that the recently created OSC was subject to both the Wisconsin Open Records Law, Wis. Stat. §§19.31-19.39, and Wisconsin's Records Retention Law, Wis. Stat. §16.61. (Compl. ¶ 222, Exhibit 39) Steve Fawcett, Vos's legal counsel, had a copy of the memo sent to Gableman. (Compl. ¶ 223, Exhibit 40)

93. Also on October 1, 2021, Gableman signed an Open Records Policy he prepared for OSC. (Compl. ¶ 224, Exhibit 41) The Policy stated, in part:

> All Office staff, including Contractors and the Special Counsel, shall comply with Wisconsin Open Records Law. The Special Counsel is the sole custodian of records and shall implement oral and written policies to ensure

[8] **SCR 20:1.1 provides:** "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

> compliance with the law. When noncompliance is brought to the attention of the Special Counsel, he shall take corrective action, up to and including termination for cause of any contractor or employee relationship. The Special Counsel shall be responsible for maintaining and releasing records pursuant to Wisconsin Open Records law.

94. Gableman, as Records Custodian, instructed OSC staff on records retention policies and practices. (Compl. ¶ 225) The policies and practices he adopted violated the Records Retention Law in at least three ways. First, Gableman erroneously told the staff they need not retain documents they considered "irrelevant or useless," including "documents that the OSC is not intending to further investigate, and is not intending to rely upon for its recommendations or reports." (Compl. ¶ 231, Exhibit 30 at 1702, footnote 5)

95. Additionally, the email system Gableman arranged for use by OSC had a feature which automatically deleted emails after a period of time. (Compl. ¶ 232, Exhibit 42) Gableman was aware of this flaw but did not correct this feature for at least several months. (Compl. ¶ 233, Exhibit 42)

96. And when OSC received an Open Records request, it sometimes made hard copies of electronic documents and then deleted the electronic copies of those documents, thus destroying any "metadata" in the electronic version. (Compl. ¶ 234, Exhibit 30 at MJG 1703-1705) With respect to emails, this practice sometimes resulted in attachments to emails being deleted with no hard copy retained. (Compl. ¶ 235, Exhibit 30 at MJG 1703-1705)

97. Each of these practices violated the Public Records Retention Law. When they came to light, American Oversight sued OSC. (Compl. ¶ 236) After Gableman was fired, the OSC settled this lawsuit by, among others things, stipulating that it had violated the Public Records Retention Law by illegally destroying documents and agreeing to pay American Oversight $60,146.34 in fines and attorney fees. (Compl. ¶ 241-242, Exhibit 43)

98. Before he was fired, Gableman attempted to defend the claim that the document retention policies he had adopted violated the Public Records Retention Law by contending OSC was not a state agency and, therefore, did not have to comply with the law. (Compl. ¶ 237, *see also* Exhibit 30 at MJG 1701-1702) The contention that the OSC was not a state agency not only directly contradicted the conclusion reached by the Legislative Council, and sent to Gableman by Speaker Vos's office (*see* Exhibits 39 and 40), but was also inconsistent with Gableman's own statements. For example, on November 10, 2021, Gableman delivered his First Interim Report to the Wisconsin Assembly. In that Report he stated that "[t]he Office of Special Counsel is an authorized agency of the State of Wisconsin." (Compl. ¶ 239, Exhibit 44 (MJG 1152-1176 at 1158)) He also pledged that the "staff [of the OSC], including and especially the Special Counsel himself, [would] take care to abide by all applicable state and federal laws, including open records laws and regulations relating to the practice of law. (Exhibit 44 at MJG 1158) Gableman also routinely contradicted this position when he entered into contracts describing OSC as "an agency of the

Wisconsin state government." (Compl. ¶ 240, Exhibit 45 at MJG 1770, Exhibit 46 at MJG 1775, Exhibit 47 at MJG 1780, and Exhibit 48 at MJG 1785)

99. Gableman's contention that the OSC was not a "state agency" and, therefore, not subject to the Public Records Retention Law, is simply an after-the-fact attempt to rationalize his mistake, rather than a legitimate legal position. If that was really his reason for not complying with the law, why didn't he tell his client that he disagreed with the Legislative Council's conclusion on this issue when his client sent that conclusion to him? And why did he tell the Assembly Committee on Campaigns and Elections that the OSC was a state agency and would comply with all laws applicable to such agencies? And why did he sign numerous contracts describing the OSC as a state agency? The answer is that it did not occur to him that he should take that position until his violations of the Public Records retention Law were uncovered in the American Oversight litigation.

100. As Records Custodian, Gableman also failed to comply with Wisconsin's Open Records Law. On October 8, 2021, American Oversight sued OSC and others, alleging violations of the Open Records Law by failing to timely and appropriately respond to open records requests. As noted in the analysis of Count 4, the courts ruled against OSC, found that OSC acted arbitrarily and capriciously in responding to various open records requests, and ordered the production of additional documents. Ultimately, OSC paid over $170,000 in fines and penalties for these violations,

and also incurred a substantial amount in outside counsel fees unsuccessfully defending Gableman's actions. (Compl. ¶ 229)

101. SCR 20:1.1 provides that: "Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." Gableman assumed the role of Records Custodian for the OSC, but then he (1) failed to take the necessary steps to educate himself regarding his obligations in that role, (2) adopted and implemented policies that violated the Public Records Retention Law, and (3) made objections to open records requests that were "arbitrary and capricious." *See generally In re Disciplinary Proceedings Against Glynn*, 225 Wis. 2d 202, 210, 591 N.W.2d 606 (1999) (lawyer's failure to take steps necessary to educate himself concerning legal issues in case violated SCR 20:1.1); *In re Disciplinary Proceeding Against Carson*, 2015 WI 26, 361 Wis. 2d 323, 860 N.W.2d 483 (same).

102. As a result of Gableman's violations of the Open Records Law and the Records Retention law, his client, and ultimately the taxpayers of Wisconsin, paid over $230,000 in fines, punitive damages and attorney fee awards (not to mention attorney fees for its own outside lawyers).

8. Count 8.

103. Gableman violated SCR 20:1.7(a)(2) because he chose to undertake the representation knowing there was a significant risk that his representation would be materially limited by his own personal interests. He also violated SCR 20:1.2(a) by then actively pursuing those personal interests and engaging in

efforts to pressure his client to expand the objectives, expense and timeframe of the investigation. [9]

104. The period following the 2020 Wisconsin General Election was politically charged and contentious. (Compl. ¶¶ 17, 244-245, *see also* Exhibit 49 at 1351-1352) Because the election took place during the COVID-19 pandemic, state election officials modified some traditional election procedures to deal with pandemic related public health concerns. (Compl. ¶ 245) Questions arose over whether those officials had acted within the law in doing so. (*Id.*) In addition, some supporters of former President Donald Trump sought to overturn the results of Wisconsin's Presidential Election based on assertions of outcome-determinative election fraud. (Compl. ¶ 244) *See generally* Comment, *Election Administration Concerns Meet Claims of a Fraudulent Election: A Comprehensive Analysis of the 2020 Election and its Aftermath in Wisconsin*, 106 Marq. L. Rev. 683 (Spring, 2023).

105. Shortly after the 2020 election Gableman, who had worked in the federal Office of Personnel Management in the Trump Administration, appeared at a Trump rally and aligned himself with those who claimed the election was stolen by asserting that "our elected leaders - your elected leaders - have allowed

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[9]**SCR 20: 1.2(a) states in pertinent part**: "[A] lawyer shall abide by a client's decisions concerning the objectives of representation[s.]"

SCR 20:1.7(a)(2) states in pertinent part: "(a) Except as provided in par. (b), a lawyer shall not represent a client is the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if... (2)There is a significant risk that the representation of one or more clients will be materially limited by ... a person interest of the lawyer. "

unelected bureaucrats at the Wisconsin Election Commission to steal our vote." ((Compl. ¶¶ 246-247, Exhibit 50) Patrick Marley, *Michael Gableman said bureaucrats 'stole our votes' before he was put in charge of reviewing 2020 election*, Milwaukee Journal-Sentinel, August 29, 2021 (refiled on-line January 6, 2022))

106. In response to concerns expressed about the 2020 election, the Wisconsin Assembly decided to conduct an investigation. (Compl. ¶ 18, Exhibit 51) It authorized Assembly Speaker Robin Vos to "hire legal counsel and hire investigators to assist the Assembly Committee on Campaigns and Elections in investigating the administration of elections in Wisconsin." (Compl. ¶ 19, Exhibit 52) Following this authorization, Vos contacted Gableman and asked him to serve as legal counsel for the investigation. (Compl. ¶ 20)

107. Vos told Gableman that the objective of the investigation/representation was to gather facts about how recent elections in Wisconsin had been administered, so the Assembly could consider possible legislative changes. (Compl. ¶ 250) Vos said that he wanted a final report by October 31, 2021, so that the Assembly would have sufficient time to consider the report and enact any legislative changes before the 2021-2022 legislative session ended on February 24, 2022. (Compl. ¶ 254)

108. Vos made clear that the objective of the representation was prospective, meaning it was to assist the Assembly in determining what legislative changes, if any, were needed in the administration of future elections. (Compl. ¶ 251) The objectives did not include supporting efforts aimed at overturning the 2020

Wisconsin Presidential election results, "decertifying" the Wisconsin electoral vote count, supporting claims the election had been "stolen," or holding officials accountable for prior actions in administering elections. (Compl. ¶ 252)

109. On June 26, 2021, Gableman signed the Coordinating Attorney Independent Contractor Agreement. (Compl. ¶ 249, Exhibit 53) Under the Agreement Gableman was to be paid $44,000 and to deliver his final report by October 31, 2021. (Exhibit 53) Before signing the contract, Gableman did not express any concerns to Vos about Vos's description of the objectives of the representation, the time frame for submitting the final report, or compensation to be paid to Gableman. (Compl. ¶ 255) He also did not tell Vos that he (Gableman) intended to enlist public support to pressure Vos to change the objectives of the investigation, increase the budget, and extend the time frame of the investigation. (*Id.*)

110. But, in September 2023, while testifying under oath in a California disciplinary proceeding against former Trump attorney John Eastman, Gableman admitted that at the time he agreed to the representation, he disagreed with the objectives, time line and compensation as outlined by Vos, and planned to pressure Vos to change them. Gableman testified "I took it [the representation] knowing that I was going to have to attempt to persuade Vos, and perhaps - and not perhaps - I knew I was going to have to enlist support among the public to persuade Vos to provide more resources, and to make it into a real investigation, and to give me the tools that were necessary. So, right away,

I'm starting a professionally adversarial relationship with the guy who's appointing me, because I don't believe he wanted a serious investigation." (Compl. ¶¶ 256-258, Exhibit 54 at MJG 1381-1382)

111. After signing the Coordinating Attorney contract, Gableman requested both more money and more time for the investigation. On August 20, 2021, the Coordinating Attorney contract was amended to, among other things, provide a budget of $676,000 and extend the time frame (and, therefore, Gableman's monthly compensation) by one month, to November 30, 2021. (Compl. ¶ 259, Exhibit 37) However, Gableman did not complete a final report by then either. (Compl. ¶ 261) He continued to work and to discuss an additional amendment with Vos. (*Id.*) In early 2022, Vos and Gableman signed a Second Amendment to the Coordinating Attorney agreement, extending the time of the contract to April 30, 2022, and requiring a final report on or before March 1, 2022. (Compl. ¶ 262, Exhibit 55)

112. On March 1, 2022, Gableman submitted what he titled his "Second Interim Investigative Report on the Apparatus & Procedures of the Wisconsin Election System." (Compl. ¶ 263, Exhibit 56)

113. Despite Vos's clear instruction that the objective of the investigation was to find facts useful for the Assembly's consideration of prospective legislative changes to the election system, this report included an appendix arguing that the legislature could "decertify" the results of the 2020

Presidential election. (Compl. ¶ 264, Exhibit 56 at MJG 1307-1312)

114. Recently, Gableman appeared on a video broadcast and explained that he included the "decertification" appendix in this report, despite Vos's instruction that this was not to be one of the objectives of the representation, because he was "really upset" and "sick and tired" of Vos "running around the state and telling people that the legislature did not have the power to decertify the election." (Compl. ¶ 265, Exhibit 57) The Wisconsin Legislative Legislative Reference Bureau had earlier opined that the Legislature did not have the power to decertify the election results. (Exhibit 59)

115. As the April 30 expiration date for the Second Amendment approached, Gableman lobbied Vos for a further extension. (Compl. ¶ 266) He also put public pressure on Vos to extend the contract. As part of this effort, on April 7, 2022, Gableman appeared on a podcast hosted by Steve Bannon. (Exhibit 60) He gave out Speaker Vos's phone number and email address and asked listeners to contact Vos and "urge him to continue" the investigation. (*Id.* at p. 4.)

116. On May 1, 2022, Vos and Gableman signed a new Agreement for Legal Services. (Compl. ¶ 267, Exhibit 61 MJG 1150-1151) Under this contract, Gableman continued to be paid for providing legal services relating to the litigation spawned by his investigation. (*Id.*) This continued until Vos fired Gableman in August, 2022. (Compl. ¶ 268, Exhibit 62)

117. Gableman's client for this representation was an organization, the Wisconsin State Assembly. (Exhibit 53) Under SCR 20:1.13(a) a "lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents." Vos and his staff were the duly authorized constituents to act on behalf of the Assembly. (See Exhibit 53 at MJG 534) Therefore, SCR 20:1.2(a) obligated Gableman to abide by Vos's decisions regarding the objectives of the representation. If Gableman objected to those objectives, or had personal interests contrary to them that materially limited his ability to abide by the decisions of the client, then he needed to either decline the representation under SCR 20:1.16(a)(1), or obtained written, informed consent after disclosing his conflict and complying with SCR 20:1.7(b). Gableman did neither.

118. Gableman's conduct demonstrated that he had a personal interest in pursuing the claim that the election in Wisconsin had been stolen from Donald Trump. He was a former employee in the Trump administration. Months before he was approached by Vos, Gableman had spoken at a pro-Trump rally and claimed that the election in Wisconsin had been stolen. (Compl. ¶¶ 246-247, Exhibit 50) By his own sworn testimony in the Eastman case, Gableman admitted that he had a "professionally adversarial relationship" with his client's representative right from the beginning of the representation, because he considered Vos's desire for a prospective focused investigation meant that Vos did not want what Gableman considered to be a "serious" investigation. And, perhaps most importantly, he decided to

include a "decertification" appendix in his final report, even though he knew Vos did not consider that an objective of the investigation, simply because he, personally, was "really upset" and "sick and tired" of Vos saying the Legislature could not decertify the election results.

119. Rather than disclosing his personal interest conflict to his client's representative before agreeing to the representation, Gableman instead decided to sign the Coordinating Attorney agreement and then embark on a campaign designed "to enlist support among the public to persuade Vos to provide more resources, and to make it into a real investigation, and to give me the tools that were necessary." His pressure campaign was successful, as he was able to increase his budget from $44,000 to $676,000 (when the costs of the litigation generated by Gableman's actions, and the fines and punitive damages incurred by the OSC are figured in, the Assembly ultimately spent over $2.3 million on the investigation (Compl. ¶ 270), his own compensation from $44,000 to $117,394.95 (Compl. ¶ 269) and the time frame for a final report from October 31, 2021, to March 1, 2022 (Exhibit 56).

120. Gableman also indulged his personal interests in seeking the limelight. "Gableman has used the probe to raise his national profile. He gave the prayer at Trump's Wisconsin rally this month and he's been a regular on conservative talk radio, including an appearance where he disparaged how Wisconsin's chief elections officer dresses." Scott Bauer, *Wisconsin GOP leader Vos fires 2020 election investigator* (Associated Press on-line

report, August 12, 2022). His multiple public appearances on videos and on podcasts further support this conclusion.

121. Gableman's conduct was decidedly inconsistent with an opinion he wrote as a Wisconsin Supreme Court Justice. Although not a disciplinary case, the Wisconsin Supreme Court in *Sands v. Menard, Inc.*, 2010 WI 96, ¶49, 328 Wis. 2d 647, 787 N.W.2d 384, recognized that a lawyer's ethical obligations, particularly the duty of loyalty to clients under the Rules of Professional Conduct, embodied strong public policy.

122. Then-Justice Gableman wrote the lead opinion in *Sands*. Based on that public policy, Gableman concluded that an arbitration panel exceeded its powers when it ordered the reinstatement of a wrongfully discharged attorney because reinstatement would clearly lead to a violation of that attorney's ethical obligations.

123. Gableman reasoned that:

> Attorneys owe a fiduciary duty of loyalty to their clients. *Berner Cheese Corp. v. Krug*, 2008 WI 95, ¶ 41, 312 Wis.2d 251, 752 N.W.2d 800. This obligation of absolute loyalty means that attorneys are required to act solely for the benefit of their clients. *Zastrow v. Journal Commc'ns, Inc.*, 2006 WI 72, ¶ 31, 291 Wis.2d 426, 718 N.W.2d 51. Several Supreme Court Rules are aimed at enforcing this duty, including the requirement in SCR 20:1.7(a)(2) that attorneys may not represent clients when "there is a significant risk that the representation ... will be materially limited by ... a personal interest of the lawyer." Indeed, the confidence and trust underlying the attorney-client relationship are foundational to the practice of law and deeply rooted in our law and Professional Rules. *See, e.g., State v. Meeks*, 2003 WI 104, ¶ 59, 263 Wis.2d 794, 666 N.W.2d 859 ("The attorney-client privilege provides sanctuary

> to protect a relationship based upon trust and confidence.") [Footnotes omitted.].

Id., ¶ 53.

124. Gableman concluded:

> We see no possible way [the attorney] could, following this protracted litigation and acrimony, step in and serve [the employer] as her ethical obligations would require. Without question, there is, in the words of SCR 20:1.7(a)(2), "a significant risk that the representation...will be materially limited by...a personal interest of the lawyer." [Footnotes omitted.]

Id., ¶ 61.

125. Gableman's conflict of interest had two aspects. The first was financial; Gableman stood to (and did) receive significantly greater compensation from an expanded investigation. The second was Gableman's personal objectives for the investigation, which conflicted with Vos's prospective-only objectives. These are conflicts prohibited by SCR 20:1.7(a)(2).

126. In *In Matter of Mullins,* 649 N.E.2d 1024 (Ind. 1995), the Indiana Supreme Court reminded lawyers their duty to the law comes before their personal interests where the two are in conflict. In that case, the parents of an adult child who had been in a vegetative state for four years petitioned the court for an order directing the removal of nutrition and hydration. Mullins, who created the "Christian Fellowship with the Disabled, Inc.", filed on behalf of the Christian Fellowship, a petition for appointment of guardian over an adult incompetent asserting that the adult was "the victim of intentional, willful, and purposeful neglect and/or abuse by her parents, her medical

doctors, and/or her health care providers, in that she is being denied essential nutrition and hydration contrary to [law]."

127. Mullins was charged with, and sanctioned for, violating Rule 1.6, Rule 4.4, and Rule 3.3. Even though Mullins was not charged with violating Rule 1.7, the Court felt compelled to issue this reminder:

> We can find no indication that the Respondent was pursuing anything other than her own personal objectives through her involvement with Sue Ann. We find nothing to indicate that the Respondent even knew Sue Ann. She was interested in Sue Ann "only in the generic sense that any person who makes the effort to go to court is interested." *In the Matter of Lawrance,* 579 N.E.2d 32, 44. Clearly, the Respondent was a stranger to the Lawrance's deeply personal family litigation, desiring only to further her own agenda. We remind lawyers that duty to the law comes before personal objectives where the two are in conflict. When a lawyer loses sight of her purpose and uses the legal system for personal vengeance, she fails in her obligations to her client, profession, and self. *See In re Crumpacker* (1978), 269 Ind. 630, 663, 383 N.E.2d 36.

Mullins, 649 N.E.2d at 1026.

9. Count 9.

128. Gableman violated SCR 20:1.6(a) and SCR 1.9(c)(2) when he appeared as a guest on programs promoting the recall of Vos and revealed information about his representation of the Assembly.[10]

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[10] **SCR 20:1.6 provides**: "(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in pars. (b) and (c)."

SCR 20:1.9(c)(2) provides: "(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter. . . (2) reveal information relating to the representation except as these rules would permit or require with respect to a client."

129. In the late spring of 2024, Vos faced a political recall campaign. (Compl. ¶ 272) Gableman appeared in two video broadcasts promoting the recall effort, both organized by Trump supporter Mike Lindell. (Compl. ¶ 273, Exhibits 57 and 63) Gableman expressed his support for the recall effort, and repeated his claim that Vos did not want a "serious" investigation. Gableman also called Vos a "serial liar who is interested only in his personal monetary financial gain." (Exhibit 57 at p. 11)

130. To support his contention that Vos did not want a "serious" investigation, Gableman recounted--in both videos--a discussion he alleges he had with Vos and his staff at the beginning of the investigation. (Compl. ¶ 275, Exhibits 57 and 63) According to Gableman, near the end of a meeting involving Gableman, Vos and members of Vos's staff, Vos made a comment that as part of the investigation Gableman "shouldn't do something silly like investigate [voting] machines." Gableman further claimed that he responded by saying he would include voting machines as part of his investigation, which he did. (*See* Exhibit 57 at p. 2 and Exhibit 63 at p. 2)

131. SCR 20:1.6 prohibits a lawyer from revealing information relating to a representation. Vos was the duly authorized constituent of Gableman's client, so the conversations between Gableman and Vos clearly related to the representation. And SCR 20:1.9(c)(2) extends the prohibition to information about the representation of former clients.

132. The scope of the information protected by this duty is extremely broad. *Wisconsin Formal Ethics Opinion EF-17-02* at 2, 6. SCR 20:1.6 does not categorize information as "confidential" and "non-confidential" information. It simply prohibits lawyers from revealing information relating to the representation of a client. Paragraphs [3] and [4] of the ABA Comment provide guidance about the scope of information protected by the rule. ABA Comment [3] states:

> The confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source.

In other words, even if everyone else may be talking about a matter, the lawyer is prohibited from doing so unless the client gives informed consent, the disclosure is implied authorized to carry out the representation, or the disclosure falls within one of the limited exceptions in SCR 20:1.6(c), none of which apply here.

133. In addition to Gableman's duty of confidentiality under SCR 20:1.6 and SCR 20:1.9(c)(2), the contracts between Gableman and the Assembly contained confidentiality provisions. The Coordinating Attorney Independent Contractor Agreement provided that Gableman would "[k]eep all information/findings related to the services rendered under this agreement confidential, except when working with integrity investigators and such designees of the Assembly whom the Speaker shall from time to time identify in writing." (Exhibit 53) The Agreement for Legal Services provided that "Gableman will execute his

duties to the client in accordance with all standards of care, including confidentiality and attorney-client privilege, with respect to an attorney-client relationship with the Client." (exhibit 61) Gableman's statements on the Lindell shows violated both his ethical and contractual duties.

134. The Wisconsin Supreme Court's recent decision in *Merry*, 2024 WI 16, ¶31, demonstrates the Court's concern with protecting client confidentiality. The Court revoked Merry's law license, based in part on his publication of a book related to his representation of a client in a criminal proceeding. His client did not give permission to Merry to disclose information about the representation.

135. Though not the exclusive reason, Merry's breach of confidentiality looms large in the Court's revocation decision. "But it is hard to imagine a more flagrant violation of 20:1.9(c)(1) and (2) than an attorney attempting to both publicize and profit from his client's confidences against the client's express wishes, as Attorney Merry did here. Such actions destroy the trust that is vital to the client-lawyer relationship and erode public confidence in the integrity of the legal profession."

10. Count 10.

136. Gableman violated SCR 20:8.4(h) and SCR 22.03(6) when, as part of the investigation in this matter, he submitted to OLR an affidavit with knowingly false statements.[11]

[11] **SCR 20:8.4(h) states that it is professional misconduct for a lawyer to**: "(h) fail to cooperate in the investigation of a grievance filed with the office of lawyer regulation as required by SCR 21.15(4), SCR 22.001(9)(b), SCR 22.03(2), SCR 22.03(6), or SCR 22.04(1)[.]"

137. On May 29, 2024, Gableman submitted to OLR his response to the grievance filed by Law Forward. Among other things, it argued that Gableman actions while serving as Special Counsel were not governed by the Rules of Professional Responsibility because he was not practicing law. The response included an affidavit from Gableman stating, "under penalty of perjury," that "[i]n my position as the head of the OSC during 2021-2022, I was never engaged in the practice of law but was the chief administrator of that office." He also swore that his "responsibilities did not include giving legal advice or representing [the OSC] or the Assembly in court. None of the parties involved considered that my appointment established a client-lawyer relationship with anyone." (Compl. ¶ 285, Exhibit 64 (MJG 991-998) at ¶¶ 6, 8)

138. This affidavit contains at least three false statements.

139. First, Gableman did give legal advice, and lots of it. For example, his Second Interim Investigative Report, delivered to the State Assembly on March 1, 2022 (Exhibit 56), he advised the Assembly, among other things, that (a) the CTCL grants to five Wisconsin cities violated Wisconsin's Election Bribery Law (Exhibit 56 at MJG 1198-1216), (b) corporate legal defense of election officials might violate Wisconsin's Ethics Code (Exhibit 56 at MJG 1250-1253), (c) the use of ballot drop boxes

SCR 22.03(6) provides: "(6) In the course of the investigation, the respondent's willful failure to provide relevant information, to answer questions fully, or to furnish documents and the respondent's misrepresentation in a disclosure are misconduct, regardless of the merits of the matters asserted in the grievance."

violated Wisconsin law (Exhibit 56 at MJG 1254-1256), (d) the Wisconsin Election Commission's advice to election officials regarding voting by nursing home residents violated Wisconsin law (Exhibit 56 at MJG 1257-1271), (e) WEC gave advice that "unlawfully encouraged" evasion of ballot security measures (Exhibit 56 at MJG 1272-1275), (f) election officials in five Wisconsin cities may have violated constitutional equal protection clauses (Exhibit 56 at MJG 1280-1284) and (g) the legislature could "decertify" the electors for the 2020 Presidential election. (Exhibit 56 at MJG 1307-1312)

140. Second, Gableman did represent OSC and the Assembly in court. On November 29, 2021 Gableman filed two Petitions For Writs Of Attachment in Waukesha County Circuit Court. Both were captioned "Michael J. Gableman, in his official capacity as Special Counsel to the Wisconsin Assembly, *ex rel.* Wisconsin State Assembly." He signed and verified both pleadings. And he included his state bar number directly below his signature. (*See* Exhibit 1 at MJG 1799-1780 and Exhibit 9 and MJG 1490-1491)

141. Third, Gableman's sworn statement that "none of the parties involved considered that [his] appointment established a client-lawyer relationship with anyone," is belied by the contracts Gableman signed with the Assembly, which clearly contemplated Gableman acting as an attorney, and by Gableman's own comments.

142. The first contract was the result of a May 28, 2021, motion of the Committee on Assembly Organization which authorized the Speaker to "hire legal counsel" to assist the Committee on

Campaigns and Elections. (Exhibit 52). The contract itself described Gableman as "Coordinating Attorney." (Exhibit 53) The First Amendment to that contract gave him the additional title of "Special Counsel." (Exhibit 37) This additional title was permitted by a motion of the Committee on Assembly Organization authorizing the Speaker "to designate the legal counsel hired pursuant to the May 28, 2021, ballot … as special counsel..." (Exhibit 65)

143. The Second Amendment to the contract provided, among other things, that:

> In addition to the foregoing, the OSC shall be authorized to provide, upon the request of the Speaker of the Assembly, legal representation for the Assembly, the Speaker of the Assembly, and/or any party designated by the Speaker of the Assembly, regarding any matter related to the activities of the OSC.
>
> (Exhibit 55 at MJG 638)

144. The last contract with Gableman is titled "Agreement for Legal Services." (Exhibit 61) Its terms provided:

> 1. The client desires to engage Consultare LLC and Gableman for legal services related to the prosecution of lawsuits involving the Office.
>
> 2. Gableman will execute his duties to the client in accordance with all standards of care, including confidentiality and attorney-client privilege, with respect to an attorney-client relationship with the Client.
>
> 3. Gableman will work as lead counsel at the direction of the client in all matters and in cooperation with outside counsel James Bopp of the Bopp Law Firm in all matters in which the Bopp Law Firm retained plus any other outside counsel retained.

> 4. The Client will pay Consultare LLC the current salary of Gableman of Five Thousand Five Hundred Dollars ($5,500) per month for all legal services including but not limited to representation, advice, consultation, and litigation strategy ….

145. The assertion that Gableman was not practicing law is also belied by his own statements. In his November 10, 2021, First Interim Report to the Assembly Gableman stated that "[t]he Office of the Special Counsel is an authorized agency of the State of Wisconsin. Its staff, including and especially the Special Counsel himself, take care to abide by all applicable state and federal laws, including open records laws and regulations relating to the practice of law." (Exhibit 44 at MJG 1158)

146. On March 15, 2022, Gableman sent a memo to Speaker Vos and marked that memo, in bold type "Attorney Work Product Privileged & Confidential." (Exhibit 56)

147. It is not possible to view the two Petitions, read what Gableman told the Legislature, see the various contracts and authorizing motions relating to Gableman's hiring and his March 15, 2022 memo and reach any conclusion other than that Gableman knowingly made false statements in his affidavit to OLR during this disciplinary process.

148. Not only did Gableman submit the false affidavit, but he refused to withdraw or correct it when confronted with the

evidence showing it was false. On July 18, 2024, about six weeks after the affidavit was submitted, OLR's counsel sent Gableman's counsel a letter enclosing, among other things, a set of Proposed Facts which OLR believed it could prove, and a response to Gableman's May 29, 2024, submission provided by the Law Forward grievants. (Exhibit 67, Exhibit 68 and Exhibit 69) The letter asked for Gableman's comments on the included documents.

149. The Proposed Facts contained several proposed facts contradicting the assertion in Gableman's affidavit that he was not practicing law. (Exhibit 68 at proposed facts 6, 8, 15, 16, 19 and 20) The Law Forward response contained a ten page discussion, and several documents, detailing why Gableman's assertion about not practicing law were untrue. (Exhibit 69 at MJG 1094-1103)

150. Despite this evidence Gableman's response to OLR's letter failed to even address the issue of whether his affidavit was false. (Exhibit 70 MJG 412-419) And, in his *Answer* to the *Complaint*, Gableman asserted that he "stands by his affidavit." (Answer ¶ 295)

151. Gableman's conduct is similar to conduct resulting in discipline in *Matter of Disciplinary Proceedings Against White*, 2020 WI 88, 394 Wis.2d 549, 950 N.W.2d 814. There, a mother hired Attorney White to represent her son in a post-conviction juvenile criminal matter. She paid White $3,000 as an advanced fee,

although White did not prepare a written agreement with the mother or the son. White told the mother that he would take action to attempt to have her son's guilty plea withdrawn. White represented to the mother that he had submitted petitions in the case, but he did not. The mother terminated the representation and asked for a refund of fees. She then filed a grievance with OLR. White responded by saying he never represented the mother or her son and that he did not take on juvenile matters. The Wisconsin Supreme Court held that by misrepresenting to OLR that he never represented the mother or her son, White violated SCR 22.03(6), enforceable via SCR 20:8.4(h). *White*, 2020 WI 88, ¶¶ 26, 61. Likewise, by filing his affidavit, Gableman violated SCR 22.03(6) and SCR 30:8.4(h).

II. Gableman's misconduct warrants a three year suspension of his law license.

A. Principles of law governing imposition of attorney discipline.

152. Two factors guide the Wisconsin Supreme Court's determination of the appropriate level of discipline in a given case. Primarily, the Court seeks proportionality to sanctions imposed in factually similar cases. *See DeLadurantey*, 2023 WI 17, ¶ 53; *In Matter of Disciplinary Proceedings Against Meisel*, 2017 WI 40, ¶ 49, 374 Wis. 2d 655, 893 N.W.2d 558. The Court also

looks to the American Bar Association's Standards for Imposing Lawyer Sanctions. *DeLadurantey*, 2023 WI 17, ¶52.

153. The next section of this submission applies a proportionality analysis to Gableman's misconduct. The number, variety and scope of violations, the unique circumstances of Gableman's representation, and his status as a former Supreme Court Justice complicate this analysis somewhat. Gableman's case exists in a "league of its own." *In the Matter of Disciplinary Proceeding Against Merry*, 2024 WI 16, ¶30, 414 Wis.2d 319, 5 N.W.3d 285. Nonetheless, sanctions imposed in other cases demonstrate why a three year suspension is appropriate here.[12]

154. The final section of this submission analyzes Gableman's violations in light of the ABA Standards, specifically Section 3.0 of the *ABA Annotated Standards for Imposing Lawyer Sanctions* (Ellyn S. Rosen ed., 2d. ed., 2019) (*ABA Standards*).

B. The parties' stipulation to a three year license suspension is reasonable in light of other cases where the Wisconsin Supreme Court has imposed substantial license suspensions.

155. This case's "league of its own" status may complicate, but it does not prevent, a proportionality analysis:

[12] Perhaps the most analogous case OLR has found in another jurisdiction is *In Re Bilbe*, 841 So.2d 729 (La 2003). In *Bilbe*, the respondent attorney failed to provide competent representation, failed to follow instructions from her client, made misrepresentations to a tribunal, knowingly disobeyed an order from a tribunal, engaged in disruptive behavior before a tribunal and failed to cooperate with the disciplinary authority. The respondent had no prior disciplinary history in more than 20 years of practice, so the Louisiana Supreme Court rejected the disciplinary authority's recommendation of disbarment and instead imposed a three year suspension.

> A sanction recommendation need only be reasonably based in existing case law; it need not spring from factually identical precedent. We should not subscribe to the view that disbarment may not occur if this Court has not previously rendered an opinion of disbarment on identical facts. Facts supporting disbarment (such as those in the present case) may be so egregious that this Court has not had the occasion to render such an opinion.

The Florida Bar v. Springer, 873 So.2d 371, 324 (Fla. 2004) (Lewis, J., concurring).

156. In *In the Matter of Disciplinary Proceedings Against Michael R. Inglimo*, 2007 WI 126, the referee found Inglimo committed 10 counts of various types of misconduct, ranging from conflicts of interest, trust account violations and criminal use of illegal drugs. The referee first categorized the various violations. He then assigned a sanction to each category. Finally, the referee added up the various sanctions to arrive at an overall sanction amount.

157. Applying a similar approach here, Gableman's misconduct falls into five categories: **(1) Dishonesty** (Counts 1, 2, 3 and 10); **(2) Inappropriate conduct in court** (Counts 4, 5 and 6); **(3) Competency** (Count 7); **(4) Conflict of interest/not following client objectives** (Count 8); and **(5) Revealing client information** (Count 9).

158. **Dishonesty.** There are many disciplinary cases involving dishonesty. The following three represent the range

of sanctions imposed by the Supreme Court and, taken together, support the three year suspension stipulated to by the parties.

159. *In re Disciplinary Proceedings Against Petersen*, 2017 WI 102, ¶39, 378 Wis. 2d 488, 904 N.W.2d 532 involved a lawyer who repeatedly lied to his client and, in one instance, to a judge. The parties stipulated to a one year suspension, and the referee recommended it. The Supreme Court agreed, but with two justices dissenting, arguing that a longer suspension was appropriate.

160. *In re Disciplinary Proceedings Against Johnson*, 133 Wis. 2d 42, 45, 393 N.W.2d 295 (1986) involved a lawyer who submitted a false medical report to insurer in attempt to obtain money for his clients and himself. The referee recommended an eighteen month suspension, but the Supreme Court rejected that recommendation and instead imposed a three year suspension.

161. In addition to Gableman's multiple acts involving false, incomplete, and misleading statements--and his overall veracity--the Referee may also consider his "attitude toward the truth[.]" *See In Matter of Disciplinary Proceedings Against Winkler*, 2015 WI 68, para. 40, 363 Wis. 2d 786, 866 N.W.2d 642. Gableman's attitude toward the truth in this matter was decidedly unprofessional.

162. *In re Matter of Disciplinary Proceedings Against Krill*, 2020 WI 20, ¶ 56, 390 Wis. 2d 466, 938 N.W.2d 589, involved a

lawyer who improperly disbursed client funds from his trust account and lied about it to the client and to a court. The parties stipulated to a three year suspension, which the referee accepted. The Supreme Court disagreed and imposed a four and one half year suspension.

163. **Inappropriate Conduct in Court.** Gableman's conduct in court, where he was disruptive, failed to follow court orders, impugned a judge's integrity and was disrespectful to opposing counsel, is similar to the conduct in *In re Matter of Disciplinary Proceedings Against Pangman*, 216 Wis. 2d 440, 451-52, 574 N.W.2d 232 (1998). There, OLR suggested a 90 days suspension. The referee disagreed and recommended a six month suspension. The Supreme Court agreed with OLR and imposed a 90 days suspension.

164. **Competency.** As shown above, Gableman's performance as Custodian of Records for the OSC was incompetent, leading to OSC's violations of Wisconsin's Open Records Law and Records Retention Law. In *In re Disciplinary Proceedings Against Nunnery*, 2007 WI 1, 298 Wis. 2d 289, the referee recommended a two month suspension for a lawyer with no prior disciplinary history, who incompetently handled certain litigation matters. The Supreme Court affirmed the referee's sanction recommendation.

165. **Conflict of Interest/Client objectives.** *In Matter of Disciplinary Proceedings Against Fenger*, 2024 WI 4, 405 Wis. 2d 556, 984 N.W.2d 403 involved an attorney who represented a

personal representative of an estate in a business transaction in which the attorney had an undisclosed personal interest. The attorney attempted to hide the violation by back dating a document and lying to OLR during its investigation. Eventually, the attorney petitioned for a consensual license revocation, which was accepted by the referee and the Supreme Court.

166. *See also In re Disciplinary Proceedings Against Inglimo*, 2007 WI 126, ¶ 75, 305 Wis. 2d 71, 740 N.W.2d 125, a case in which the attorney committed several acts of misconduct, including "put[ting] his own interests above his duty to promote and protect the interests of his clients, thereby violating one of the core principles of the legal profession". OLR suggested a three year suspension, Inglimo argued for no suspension. The referee recommended an 18 month suspension, but the Supreme Court imposed a three year suspension.

167. **Confidentiality**. As recently as last year, the Supreme Court emphasized the importance of the confidentiality rules: "[o]ur ethical rules make clear that attorneys owe a duty of confidentiality to both current and former clients." *Merry*, 2024 WI 16, ¶ 30. In *Merry*, the attorney wrote and published a book about a client he represented in a criminal matter, despite the client's refusal to give consent. The book revealed information about the representation. As the Court noted, such conduct destroys "the trust that is vital to the client-lawyer

relationship and erod[ed] public confidence in the integrity of the legal profession." *Id.*, ¶ 31. Therefore, the Court revoked Merry's license.

168. Merry had a lengthy disciplinary history, Gableman does not. But the *Merry* decision makes clear that intentional, self-serving breaches of client confidentiality justify at least a lengthy suspension:

> We acknowledge that all of Attorney Merry's previous disciplinary matters resulted in reprimands, not license suspensions. Under different facts, a suspension, rather than revocation, might be considered a reasonable next step in the progressive discipline process. But when the circumstances have called for it, we have revoked an attorney's law license for misconduct even where (quite unlike here) the attorney had no prior disciplinary history. In *In re Disciplinary Proceedings Against Wright*, 180 Wis. 2d 492, 509 N.W.2d 290 (1994), for example, we concluded that an attorney's conversion of client funds warranted license revocation, even though the attorney had never been disciplined before. Here, Attorney Merry's misconduct was arguably far more serious than that involved in *Wright*: client funds can be replaced, but the harm caused by Attorney Merry's improper use and very public revelation of M.S.'s confidences cannot be undone; that bell cannot be unrung. We therefore impose revocation as the next disciplinary step for Attorney Merry.

Id., ¶¶ 33, 38 (footnote omitted).

169. Looking at the totality of the violations here, and considering the fact that Gableman, as a former justice of the Supreme Court, certainly knew better, the three year suspension stipulated to by the parties easily passes the proportionality test.

C. The *ABA Standards* support the three year suspension.

1. Gableman violated duties owed to his client, to the public, to the legal system, and to the profession.

170. Lawyers owe duties to their clients, to the public, to the legal system, and to the profession. The first factor for consideration under the *ABA Standards* is which of those duties the offending lawyer violated. Gableman violated them all.

171. Gableman failed to discharge his duty to his client in several ways. He provided incompetent representation, as shown in Count 7. He failed to disclose a personal interest conflict and failed to follow the objectives of his client, as shown in Count 8. And he revealed information relating to the representation as shown in Count 10.

172. With respect to Gableman's duties to the public, the Annotation to section 5.0 of the *ABA Standards* states that: "The most important duty a lawyer owes to the public is the duty to maintain standards of personal integrity upon which the community relies." Gableman violated that duty by making false accusations against public officials during his public testimony to an Assembly committee (Count 3).

173. Lawyers also owe duties to both the legal system and the legal profession:

> Lawyers . . . owe duties to the legal system. Lawyers are officers of the court, and must abide by the rules of substance and procedure which shape the

> administration of justice. Lawyers must also operate within the bounds of the law, and cannot create or use false evidence, or engage in any other illegal or improper conduct.
>
> Finally, lawyers owe duties to the legal profession. Unlike the obligations mentioned above, these duties are not inherent in the relationship between the professional and the community. These duties do not concern the lawyer's basic responsibilities in representing clients, serving as an officer of the court, or maintaining the public trust, but include other duties relating to the profession.

ABA Standards, pt. II, Theoretical Framework at xix. These professional duties "include maintaining the integrity of the profession," *see id.* at six, as well as cooperating with disciplinary authorities. *ABA Standards* at sec. 7.0.

174. Gableman violated the duties he owed to the legal system and the legal profession by filing false and misleading pleadings (Counts 1 and 2), when he disobeyed court orders and engaged in disruptive behavior in Judge Remington's courtroom (Count 4), when he attacked Judge Remington's impartiality and demeaned opposing counsel (Counts 5 and 6), and when he submitted a false affidavit to OLR (Count 10).

175. "Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system." *ABA Standards* at sec. 7.2. So it is here.

176. Significantly, Gableman's acts of misconduct all stemmed from, or related to, his high-profile, public capacity as Special Counsel. By accepting the representation, Gableman

chose to put himself squarely in the public's view. To the public, he held a position of leadership, authority, and power, all bestowed by government fiat. And that perception was heightened by Gableman's prior public service, including his service as a Justice of the Wisconsin Supreme Court.

177. Serving in such a public position was the functional equivalent of holding elective office. When an attorney occupying such a position commits professional misconduct, he violates the public's trust and undermines public confidence in its officials. *In Disciplinary Proceedings Against George*, 2008 WI 21, ¶27, 308 Wis. 2d 50, 746 N.W.2d 236. (Former State Senator's law license suspended for four years and three months after conviction of federal conspiracy charges).

2. Most of Gableman's violations were intentional acts.

178. The second factor under the *ABA Standards* is whether the attorney's conduct was intentional, knowing, or negligent. Intentional conduct is the most culpable, negligent conduct the least:

> The most culpable mental state is that of intent, when the lawyer acts with the conscious objective or purpose to accomplish a particular result. The next most culpable mental state is that of knowledge, when the lawyer acts with conscious awareness of the nature or attendant circumstances of his or her conduct both without the conscious objective or purpose to accomplish a particular result. The least culpable mental state is negligence, where a lawyer fails to be aware of a substantial risk that circumstances exist or that a

> result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation.

ABA Standards, pt. II, Theoretical Framework at xix.

179. Gableman acted with the most culpable mental state when he intentionally committed the misconduct specified in Counts 1, 2, 3, 4, 5, 6, 8, 9, and 10.

180. Regarding Counts 1 and 2, Gableman knew his allegations in the Petitions that the depositions of Mayors Rhodes-Conway and Genrich had been continued and that they then failed to appear for those depositions were false. Gableman himself told the City Attorney of Madison that the deposition of the mayor of Madison was not necessary if Madison produced documents as promised--which it did. Gableman himself told the press that he was no longer requesting depositions of the Mayors. Gableman himself wrote the emails continuing the "person most knowledgeable" depositions, not the depositions of the Mayors. Gableman himself received letters from the attorneys from Madison and Green Bay saying that they understood that there would be no depositions until further word was received from the OSC. And it was Gableman who asked for *ex parte* relief, knowing that material facts about the correspondence between the parties, the production of documents by the cities, and the existing litigation by the Department of Justice claiming the subpoenas were invalid, were not included in the Petitions. Gableman intentionally violated SCR 20:3.3(a)(1), SCR 20:3.3(d) and SCR 20:8.4(c).

181. Regarding Count 3, Gableman knew his testimony claiming that the Mayors "ignored" their subpoenas and "failed without reason or excuse to appear for their depositions" was false. And his claim that the Mayors sought to "hide from accountability" and avoid answering questions about "what they did with the millions of dollars in Zuckerberg money they took" has no factual basis. The documents produced by Madison and Green Bay detailed exactly what was done with the grant money received by those cities. Once again, Gableman acted intentionally.

182. Counts 4, 5, and 6 are all based on statements made by Gableman. From Gableman's consistent confrontational behavior during the June 10 hearing, the Referee can properly infer that Gableman intentionally disobeyed Judge Remington's order and admonitions to behave properly, intentionally challenged the Judge's integrity, and intentionally made false, derogatory, and demeaning public statements about opposing counsel.

183. Regarding Count 8, Gableman's testimony in the John Eastman trial demonstrates that he intentionally did not disclose his intent to pursue his personal objectives during the representation. And his decision to include an appendix to his March 1, 2022, report opining that the Legislature could decertify the results of the 2020 Presidential election, simply because he "got sick and tired" of hearing Speaker Vos tell others that the Legislature could not was obviously intentional conduct.

184. Gableman's decision to appear on podcasts promoting the recall of Speaker Vos was plainly intentional, as was his decision to disclose information relating to the representation (Count 9).

185. Finally, Gableman clearly acted intentionally when, as described in Count 10, he submitted a sworn affidavit to OLR, falsely stating that he did not give legal advice to the Assembly, never represented it in court and that none of the parties considered that his appointment as Coordinating attorney and then Special Counsel established a lawyer-client relationship with anyone.

186. Count 7 is the only count that does not clearly involve intentional conduct. It alleges that Gableman failed to provide competent representation regarding OSC's compliance with Wisconsin's Open Records and Records Retention Laws. While Gableman's decision to delete and destroy public records may have been intentional, that is not what OLR has alleged.

3. Gableman's misconduct caused significant, actual injury, as well as potential injury, to both his client and the public at large.

187. The third factor identified by the *ABA Standards* is what injury or damage was caused by the lawyer's violations.

188. The most easily quantifiable injury or damage caused by Gableman's violations involve the financial costs borne by the Assembly, and eventually by Wisconsin taxpayers. Gableman's incompetent handling of public records and public records

requests cost the Assembly over $230,000 in attorney fees and punitive damages to American Oversight. (Compl. ¶¶ 229, 242) In addition, the Assembly paid over $1.5 million for lawyers to represent the OSC in the litigation spawned by the open records cases and the false petitions. Of course, those costs ultimately landed on Wisconsin taxpayers.

189. Less easily quantified, but no less an actual injury caused by Gableman's misconduct, is the impact of his multiple false statements about the Mayors of Green Bay and Madison. Gableman falsely accused them of engaging in election misconduct, attempting to cover it up, and intentionally failing to cooperate with OSC. Such accusations caused actual personal, professional and reputational harm to Mayors Rhodes-Conway and Genrich, by undermining the public's perception of their professional competence, character, and fitness to serve as elected political officers.

190. And Gableman's false claims harmed the public. They undermined public confidence in the results of our elections and elections systems--in particular, the 2020 Wisconsin General Election. While it may be difficult to quantify this harm, that does not mean it is not real. *See* Comment, *Election Administration Concerns Meet Claims of a Fraudulent Election: A Comprehensive Analysis of the 2020 Election and its Aftermath in Wisconsin*, 106 Marq. L. Rev. 683, 716-717 (Spring, 2023):

> To his credit, Speaker Robin Vos has never himself advanced abject lies about the 2020 election. However, after receiving significant pressure from President Trump decertify the 2020 election, Speaker Vos appointed retired Wisconsin Supreme Court Justice Michael Gableman to lead an independent investigation and review of the election. Gableman's investigation, however, provided little added value to an election already highly scrutinized, and instead served as a vehicle for suggesting the 2020 election be decertified. Roughly eight months into the investigation, a state circuit court judge released records which showed the review "consisted of little investigation." Instead, the review reaffirmed what had been reported by several post-election audits--including ones by the State Legislative Audit Bureau and WILL. Again, the public was presented with evidence that legitimate questions of election administration existed in 2020, but no level of purported fraud affected the election's outcome. Despite this, Gableman still advocated for the legislature to "take a very hard look" at decertifying the 2020 election--a position rejected by lawyers from both major parties.
>
> After a year of "much to-do about nothing" Speaker Vos fired Gableman and disbanded his investigation. The decision came after Gableman endorsed Vos's challenger in the 2022 Midterms primary, Adam Steen--an outspoken advocate for the position that fraud plagued the 2020 election. Although Vos called Gableman "an embarrassment to [the state of Wisconsin]," he has been less pointed about the financial cost of this investigation; the Milwaukee Journal Sentinel reported the election review cost taxpayers over $1 million. The more significant cost, however, cannot be put into dollar figures, but instead must be measured by the way this investigation unnecessarily fueled the flames of fraud.

191. Gableman's high-profile misconduct during the June 10, 2021 hearing--his disobedience of Judge Remington's order, his disruptive behavior, his false and/or reckless statements regarding the Judge's integrity, and his false, derogatory, and demeaning statements regarding opposing counsel--undermined public confidence in the legal system.

192. To reiterate: The wisdom of the Assembly's decision to investigate the 2020 Wisconsin Presidential election is not at issue in this proceeding. Gableman's multiple acts of misconduct led to this OLR matter. That Gableman committed his misconduct during a representation occurring in a charged political environment does not alter the fact that he committed them, and that he deserves a three year suspension as a consequence.

4. Multiple aggravating factors far outweigh the sole mitigating factor.

193. The final factor in the *ABA Standards* requires a determination of whether aggravating or mitigating factors should affect the final decision. Such factors include:

> [P]rior disciplinary offenses; dishonest or selfish motive; a pattern of misconduct; multiple offenses; bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency; submission of false evidence, false statements or other deceptive practices during disciplinary process; refusal to acknowledge wrongful nature of conduct; vulnerability of victim; substantial experience in the practice of law; and indifference to making restitution. Mitigating factors include: absence of prior disciplinary record, absence of dishonest or selfish motive; personal or emotional problems; timely good faith effort to make restitution or to rectify consequences of misconduct; full and free disclosure to disciplinary board or cooperative attitude toward proceedings; inexperience in the practice of law; character or reputation; physical or mental disability or impairment; delay in disciplinary proceedings; interim rehabilitation; imposition of other penalties or sanctions; remorse; and remoteness of prior offenses.

194. Of the potentially mitigating factors identified in the *ABA Standards*, only one arguably applies here: Gableman has no prior record of lawyer discipline.

195. In sharp contrast, at least five of the potential aggravating factors apply.

196. **Dishonest or selfish motive.** Much of Gableman's misconduct reflects his selfish motive; that is, he pursued personal objectives, not those of his client. Specifically, he used the representation to indulge his personal desire to overturn the 2020 Wisconsin Presidential election results, to profit financially by prolonging the representation; and later to aid the partisan political recall effort against Vos.

197. **A pattern of misconduct.** As alleged in the *Complaint*, Gableman committed multiple acts of misconduct. *Cf. Nora*, 2018 WI 23 at para. 40. (suspension warranted in part by fact that lawyer's misconduct "was not an isolated occurrence, but rather was a pattern of multiple instances of misconduct that stretched over a substantial period of time").

198. The record shows that Gableman committed additional acts of misconduct which, while not specifically pleaded as counts in the *Complaint*, demonstrate his disregard for the Rules of Professional Conduct. He failed to register his limited liability company, Consultare, as required by SCR 20:5.7(2)(b). (Compl. ¶ 16 and footnote 1). He had *ex parte* communications with

represented persons. (Compl. ¶ 119 and footnote 2) And he routinely used the honorific "Justice" in identifying himself, in possible violation of SCR 20:7.1 and ABA Formal Opinion 95-391. (*See*, for example, Exhibit 12 at MJG 603, Exhibit 71 at OLR 577 and Exhibit 58)

199. **Multiple offenses.** The *Complaint* alleges ten acts of misconduct between 2021 and 2024.

200. **Refusal to acknowledge wrongful nature of conduct and lack of remorse.** Other than stipulating that he "cannot successfully defend against the allegations of misconduct contained in the *Complaint*," to date, Gableman has not publicly acknowledged the wrongful nature of his conduct. He certainly has not expressed any remorse for it. He has not publicly apologized to the Mayors of Green Bay and Madison for falsely accusing them of ignoring their subpoenas and engaging in a cover-up. He has not publicly apologized to Judge Remington and opposing counsel for his conduct at the June 10 hearing. To the contrary, his responses to OLR's investigation have aggressively attacked those who brought grievances against him. (*See* Exhibits 36, 49, 64 and 70)

201. Accepting responsibility for misconduct is an important factor in determining sanctions in a disciplinary case. As the Wisconsin Supreme Court has stated: "It is clear that the court system and the public need protection from such abuses of

the legal system. Also, Attorney Eisenberg must be made to understand and accept the responsibilities of the legal profession and the ethical constraints placed upon its practice. A severe sanction is called for to accomplish this." *Eisenberg*, 144 Wis. 2d at 315-316 (imposing two-year license suspension for multiple acts of misconduct).

202. **Substantial experience in the practice of law.** Gableman was admitted to the practice of law in Wisconsin in 1994. (Compl. ¶ 2) Since that time, he has served in various capacities as both a lawyer and a jurist. Indeed, he once taught Professional Responsibility as an adjunct law school professor. (Compl. ¶ 23) And, most importantly, he served as a member of the highest court of this state--the court ultimately responsible for evaluating and disciplining lawyer malfeasance. (Compl. ¶ 22) A lawyer with Gableman's experience should be familiar with the Rules of Professional Conduct for Attorneys, and should have been able to recognize and avoid ethically uncertain situations arising during the representation. Regrettably, Gableman did not.

CONCLUSION

203. Gableman has stipulated that he "cannot successfully defend against the allegations of the *Complaint*." The reason he cannot successfully defend against these allegations is obvious. The evidence supporting the allegations, which comes almost

exclusively from documents written or received by Gableman, and transcripts of his own testimony, is overwhelming. That evidence fully supports the violations as alleged in all ten counts of the *Complaint*. The parties' agreement that a three year suspension of Gableman's law license is an appropriate sanction is supported by previous Wisconsin disciplinary cases and the *ABA Standards*. Therefore, OLR respectively requests that the Referee find that OLR has prevailed on each of the 10 count of the Complaint, and recommend to the Supreme Court a three-year suspension of Gableman's law license.

Dated this 24th day of April, 2025

OFFICE OF LAWYER REGULATION

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