

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

CASE CODE 30912

OFFICE OF LAWYER REGULATION,

CASE NO. 2024AP \_\_\_\_\_ -D

Complainant;

MICHAEL J. GABLEMAN,

Respondent.

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**COMPLAINT**

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**NOW COMES** the Supreme Court of Wisconsin - Office of Lawyer Regulation (OLR) by Retained Counsel, Donald K. Schott, and alleges as follows:

1. The OLR was established by the Supreme Court of Wisconsin and operates pursuant to Supreme Court rules. This *Complaint* is filed pursuant to SCR 22.11.

2. Michael J. Gableman (Gableman) was admitted to the practice of law in Wisconsin on November 23, 1994, State Bar No. 1024325. The most recent address furnished by Gableman to the State Bar of Wisconsin is P.O. Box 510145, New Berlin, WI 53151-0145.

3. Gableman has no previous disciplinary history with OLR.

**Overview Of The Complaint**

4. In June 2021, the Wisconsin State Assembly (Assembly), through Assembly Speaker Robin Vos (Vos), retained Gableman to

assist the Assembly's Committee on Campaigns and Elections in conducting an investigation of election administration in Wisconsin. Gableman remained in that position until he was fired by Vos in August 2022.

5. During the course of his representation of the Wisconsin Assembly, Gableman violated several of the Court's Rules of Professional Conduct for Attorneys.

6. Gableman violated SCR 20:3.3(a)(1) and SCR 20:3.3(d) (Candor toward the tribunal), and SCR 20:8.4(c) (Misconduct) when he filed petitions seeking writs of attachment against the mayors of Green Bay and Madison. These petitions contained false statements and failed to inform the tribunal of material facts known to Gableman that would enable the tribunal to make an informed decision. These violations are described in Counts 1 and 2 of the Complaint.

7. Gableman violated SCR 20:4.1(a) (Truthfulness in statements to others), SCR 20:4.4(a) (Respect for rights of 3rd persons) and SCR 20:8.4(c) (Misconduct) when, during his public testimony to an Assembly committee, he made false statements about the responses of the Mayors of Madison and Green Bay to subpoenas issued to them. These violations are described in Count 3 of the Complaint.

8. Gableman violated SCR 20:3.4(c) (Fairness to opposing party and counsel), SCR 20:3.5(d) (Impartiality and decorum of

tribunal), SCR 20:8.4(g) (Misconduct) and SCR 40:15 (Attorney's oath) when he deliberately disobeyed an order of the court and engaged in disruptive behavior at a court hearing on June 10, 2021. These violations are described in Count 4 of the Complaint.

9. Gableman violated SCR 20:8.2(a) (Judicial and legal officials), SCR 20:8.4(g) (Misconduct) and SCR 40:15 (Attorney's oath) when he made statements about the integrity of a judge when he knew those statements to be false or acted in reckless disregard as to the truth or falsity of the statements. These violations are described in Count 5 of the Complaint.

10. Gableman violated SCR 20:8.4(g) (Misconduct) and SCR 40:15 (Attorney's oath) when he made false, derogatory and demeaning public statements about opposing counsel. This violation is described in Count 6 of the Complaint.

11. Gableman violated SCR 20:1.1 (Competence) when he, in his capacity as Custodian of Records for the Office of Special Counsel, committed several violations of Wisconsin's Open Records Law and Records Retention Law. This violation is described in Count 7 of the Complaint.

12. Gableman violated SCR 20:1.2(a) (Scope of representation and allocation of authority between lawyer and client) and SCR 20:1.7(a)(2) (Conflicts of interest current clients) when he accepted the representation with the undisclosed intent to pursue personal interests and objectives in the investigation and to

enlist public pressure to force Vos to expand the objectives, expense and time frame of the investigation, and then proceeded to do exactly that. These violations are described in Count 8 of the Complaint.

13. Gableman violated SCR 20:1.6 (Confidentiality) and SCR 20:1.9(c)(2) (Duties to former clients) when he appeared as a guest on video programs promoting an effort to recall Vos from his Assembly seat and revealed information about the representation. These violations are described in Count 9 of the Complaint.

14. Gableman violated SCR 20:8.4(h) (Misconduct) and SCR 22:03(6) (Investigation) when he, in response to OLR's investigation of one of the grievances against him, submitted to OLR an affidavit falsely stating that during his representation of the Assembly (1) his duties did not include giving legal advice, (2) he did not represent the Assembly in court and (3) none of the parties involved considered that his appointment as Special Counsel established an attorney-client relationship. These violations are described in Count 10 of the Complaint.

**Regarding All Counts  
Gableman/Consultare**

15. Consultare LLC (Consultare) is a Wisconsin limited liability corporation Gableman formed in 2019.

16. Gableman is the sole member and president of

Consultare.<sup>1</sup>

### **Creation of the Attorney-Client Relationship**

17. After the 2020 Wisconsin General Election, public questions arose regarding the manner in which the state's election was administered by the WEC and local election officials. There were also allegations of fraud and questions about the legitimacy of President Joseph Biden's victory.

18. In March 2021, the Wisconsin State Assembly passed Resolution 15, directing the Assembly Committee on Campaigns and Elections to "investigate the administration of elections in Wisconsin, focusing in particular on elections conducted after January 1, 2019."

19. On May 28, 2021, the Committee on Assembly Organization passed a resolution authorizing 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".

20. In June 2021, Vos contacted Gableman to determine his interest in serving as legal counsel to assist the Assembly Committee in its investigation.

21. At that time, Gableman was not employed as an attorney.

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<sup>1</sup> OLR's investigation revealed that, before accepting the representations, Gableman failed to file the annual registration and pay the filing fee required of lawyers or law firms organized as limited liability organizations. See SCR 20:5.7(2)(b).

22. Gableman had previously worked as a state and federal employee. He had also served as a Wisconsin assistant district attorney, a Wisconsin district attorney, a Wisconsin circuit court judge, and a Wisconsin Supreme Court Justice.

23. Gableman had also previously worked as an adjunct professor of law at the Hamline University School of Law in Minneapolis, Minnesota, teaching professional responsibility.

24. Gableman had, by his own admission, no employment experience in private practice.

25. Gableman had, by his own admission, no understanding of how Wisconsin elections worked.

26. On June 25, 2021, Vos (on behalf of the Wisconsin Assembly) and Gableman (on behalf of Consultare) signed the Coordinating Attorney Independent Contractor Agreement (Coordinating Attorney Agreement). The Coordinating Attorney Agreement retained Gableman/Consultare to serve as coordinating attorney to assist the Assembly Committee on Campaigns and Elections.

27. The Coordinating Attorney Agreement specified the services Gableman would render, including: (1) coordinating the day to day investigative work relating to potential irregularities and/or illegalities connected to the 2020 November election in Wisconsin; (2) analyzing and delegating to investigators leads and allegations; (3) keeping a weekly report of investigative findings;

(4) compiling all investigator and attorney reports into a final report related to the election investigation; and (5) submitting that report to Vos.

28. The Coordinating Attorney Agreement became effective July 1, 2021, continuing until October 31, 2021.

29. Under the Coordinating Attorney Agreement, Gableman would receive a fee of \$11,000 a month for each of the four months covered by the Agreement.

30. Under the Coordinating Attorney Agreement, Gableman was responsible for paying for equipment, supplies, mileage, hotel stays and other expenses required to perform the services set forth in the Agreement.

31. On August 20, 2021, the parties to the Coordinating Attorney Agreement prepared a First Amendment to the Agreement (First Amendment). This Amendment "approve[d] and provide[d] additional resources ... in order for Gableman to perform the Services required under the IC Agreement[.]"

32. The First Amendment also "confirm[ed] that Gableman shall act as the Custodian of Records with regard to the investigation that is the subject of the IC Agreement."

33. The First Amendment also established "[t]he Office of the Special Counsel (the Office) for the investigation ... [and provided that] Michael J. Gableman, as Special Counsel, shall control such Office...."

34. The First Amendment included a budget providing for \$676,000 in expenditures. It added an additional month to the time period for which Gableman would be paid. His total compensation increased from \$44,000 to \$55,000. In addition, the budget provided that the Assembly would pay certain expenses, such as rent, travel, and office equipment, which were Gableman's responsibility under the Coordinating Attorney Agreement.

35. On August 27, 2021, the Committee on Assembly Organization passed a motion authorizing Vos "to designate the legal counsel hired pursuant to the May 28, 2021, ballot adopted the Committee on Assembly Organization, as special counsel to oversee an Office of Special Counsel."

36. Gableman, as Special Counsel, pledged to abide by Wisconsin's open records laws and the regulations relating to the practice of law. On November 10, 2021, he submitted his First Interim Report to the Assembly. Gableman wrote in that report that the "staff [of the Office of Special Counsel], 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."

37. In approximately March 2022, the parties to the Coordinating Attorney Agreement prepared a Second Amendment to Agreement (the Second Amendment).



38. The Second Amendment did not specify a start date, but stated it "shall continue through April 30th unless otherwise agreed to by both parties."

39. On May 1, 2022, when the Second Amendment expired, the Assembly and Gableman/Consultare entered into an Agreement for Legal Services. It stated that "[t]he Parties desire to enter into a further agreement for legal services provided by Consultare, LLC so that the Office may remain open in order to prosecute a series of lawsuits the Office is engaged in."

40. The Agreement for Legal Services further stated 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 to the client."

41. In September 2021, Gableman hired New York attorney Andrew Kloster (Kloster) and California attorney Carol Matheis to work for the Office of Special Counsel. Both had worked with Gableman in the United States Office of Personnel Management under former President Trump.

42. In November 2020, Kloster—as a Republican Party election observer for the 2020 Presidential election in Wisconsin—had submitted an affidavit alleging irregularities with the City of Green Bay's election procedures.

43. As an attorney managing other lawyers, Gableman had to "make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct." SCR 20:5.1(b). Gableman was directly answerable for any conduct which he either knew of or ordered. SCR 20:5.1(c). He was also answerable for non-attorney subordinates. SCR 20:5.3.

44. On August 12, 2022, Vos fired Gableman/Consultare.

#### **REGARDING COUNTS 1-2**

**Gableman's Efforts and Conduct in Obtaining Documents Related to the Administration of the November 2020 Wisconsin General Election, and his Eventual Filing of Petitions For Writs of Attachment of the Person against the Mayors of Madison and Green Bay.**

**Gableman issued subpoenas to City of Madison officials.**

45. On September 28, 2021, Vos and Assembly Chief Clerk Edward A. Blazel (Blazel), acting on behalf of the Assembly, issued several subpoenas at Gableman's request. One subpoena—directed to the Clerk of the City of Madison—commanded her to appear before the Special Counsel for a deposition on October 15, 2021. It also commanded her to bring to the deposition certain documents related to the November 2020 Wisconsin General Election. The subpoena was served on October 1, 2021.

46. On October 4, 2021, Vos and Blazel issued two additional subpoenas to City of Madison officials, again at Gableman's request. One commanded the Mayor of Madison, Satya Rhodes-Conway, to appear before the Special Counsel for a deposition on October

22, 2021, and to bring certain documents with her. The other commanded the City of Madison to cause "the person most knowledgeable in regard to the November 2020 General Election in Wisconsin ... to appear in person before the Special Counsel" for a deposition, also on October 22, 2021. That subpoena also required the designated "person most knowledgeable" to bring certain documents to the deposition. Both of these subpoenas were served on October 6, 2021.

47. The document requests included with the two October 4th subpoenas were substantially similar to the document request included with the September 28th subpoena.

**The Resulting, Substantial Discussion Between the Madison City Attorney and the Office of Special Counsel Regarding Compliance With the Subpoenas, and the Agreements They Reached.**

48. On October 5, 2021, Madison City Attorney Michael Haas (Haas) emailed the Office of Special Counsel, asking to speak to Gableman about the September 28th subpoena to the Madison City Clerk. Haas asked for a telephone number or email address for Gableman. Noting the approaching response date for the subpoena, Haas asked for a prompt reply.

49. At the time he sent this email, Haas did not know about the October 4th subpoenas because they had not yet been served.

50. Haas received no immediate answer to his October 5th email.

51. On October 7, 2021, after the subpoenas for Mayor Rhodes-Conway and a "person most knowledgeable" had been served, Haas again emailed the Office of Special Counsel asking to speak to someone about the subpoenas. He also left a voice mail with the same message.

52. Later on October 7th, Haas spoke by telephone with Andrew Kloster of the Office of Special Counsel. After discussion, they agreed that (1) the City of Madison (Madison) would produce to the Office of Special Counsel copies of documents Madison had previously produced in response to various open records requests; (2) if Madison produced those documents, the depositions scheduled for October 15th and October 22nd would not proceed on those dates; and (3) the Office of Special Counsel would review the documents provided by the City and would inform Haas if the Office had any follow-up questions or additional, specific production requests.

53. On October 8, 2021, Kloster emailed Haas regarding the agreement reached the previous day.

54. Kloster characterized the agreement in this fashion: the City of Madison would produce, by computer flash drive, "all responsive communications you may reasonably produce by next Friday, October 15, specifically including but not limited to the open records productions you have already made." Kloster further stated that "[i]f 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."

55. Hass emailed a response to Kloster that same day. Hass took issue with some portions of Kloster's description of the agreement.

56. Hass said: "My clear recollection, as well as my contemporaneous notes, confirm that you stated that if the City of Madison provides our responses to previous public records requests in the relevant time frame, that would be sufficient to comply with the subpoenas for purposes of what is considered due on October 15 and 22, 2021, including the requests for interviews. ... To make sure I understood, I repeated that back to you and you confirmed my understanding. ... As we also agreed, the Special Counsel can certainly reserve the right to request additional documents and schedule interviews after reviewing the voluminous documents that will be provided."

57. Haas ended his email: "[p]lease let me know if you have any concerns or questions regarding this approach".

58. Gableman telephoned Hass that same day. Gableman told Hass he viewed the requested appearances by Mayor Rhodes-Conway and the City Clerk as being necessary only for the purposes of producing the requested documents. He contrasted that with the subpoena to the City of Madison for a Person Most Knowledgeable, whom he said he may want to interview at some point.

59. On October 14, 2021, Haas sent Gableman a computer flash drive containing documents produced by the City of Madison. Haas' cover letter confirmed the prior understanding that, in light of the document production "neither Clerk Witzel-Behl nor Mayor Rhodes-Conway will appear for an interview on October 15 or October 22, 2021."

60. With respect to the Person Most Knowledgeable deposition, Haas' letter said 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 the City continued to reserve "the right to object to the issued subpoenas or subsequent requests based on appropriate reasons." He included with his letter a copy of a letter from Wisconsin Attorney General Josh Kaul, dated October 11, 2021, which raised several legal challenges to the subpoenas issued at the request of the Office of Special Counsel.

61. Neither Gableman nor anyone else from the Office of Special Counsel objected to, or took issue with, the statements in Haas's letter.

62. On October 21, 2021, Gableman emailed Haas, stating "[w]e 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" and stating that "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," he wished to continue the return date for the Person Most Knowledgeable deposition from October 22 to November 15, 2021.

63. Gableman's email made no mention of the subpoenas he had issued to Mayor Rhodes-Conway or the Madison City Clerk, and no mention of any desire to interview or depose either of them.

64. After more than a week had passed without any follow-up by Gableman or anyone from the Office of Special Counsel on the promise to reach an understanding of the scope and nature of the topics to be addressed in the person most knowledgeable deposition, Haas responded to Gableman's email with a letter dated November 2, 2021. Haas pointed out that litigation had recently been commenced challenging the Office of Special Counsel's authority to issue subpoenas and require depositions. He was referring to an action by the Wisconsin Department of Justice on behalf of the WEC. See paras. 77-80, *infra*.

65. Haas also stated that, in light of this litigation, and since Gableman had not provided any information about the intended scope and nature of the topics to be discussed at the Person Most

Knowledgeable deposition the October 21 email had scheduled for November 15, 2021, Haas was "reiterating 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".

66. Haas did not receive any response to his November 2 letter from Gableman or any other person from the Office of Special Counsel. And no one from the Office of Special Counsel made any effort 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.

67. Haas heard nothing further from Gableman or the Office of Special Counsel before November 29, 2021, when Gableman filed a Petition for Writ of Attachment falsely alleging that Mayor Rhodes-Conway deposition had been continued to November 15 and that she had failed, "without justification," to appear for her deposition at that time.

**Gableman's Filing of the Petition for Writ of Attachment of the Person Against the Mayor of Madison.**

68. On November 29, 2021, Gableman filed—as counsel—an ex parte Petition for Writ of Attachment of the Person (Madison Petition) in Waukesha County Circuit Court. The Madison Petition named Satya Rhodes-Conway, the Mayor of Madison, as respondent.



69. Gableman signed the Madison Petition as "Special Counsel to the Wisconsin State Assembly." He also included his State Bar Number below his signature.

70. The Madison Petition was also a verified pleading, sworn to personally by Gableman.

71. The Madison Petition accurately alleges that a subpoena was served on Mayor Rhodes-Conway commanding her to appear to give testimony and deliver documents on October 22, 2021, but then falsely alleges that this "time and place" for this appearance was "unilaterally continued" to November 15, 2021. This is false because the Office of Special Counsel never continued Mayor Rhodes-Conway's deposition. To the contrary, Gableman himself told Hass that the Mayor's deposition would not be necessary if Madison produced the requested documents, which it did. The only reference ever made to continuing a deposition was with respect to the "person most knowledgeable" deposition.

72. The Madison Petition also falsely alleges that Mayor Rhodes-Conway failed to appear on November 15 "without justification." This is false because there was no reason for Mayor Rhodes-Conway to appear on November 15.

73. Gableman attached these documents as Exhibits to the Madison Petition: (1) documents establishing the Wisconsin Assembly's appointment of Gableman as Special Counsel; (2) memos from the Legislative Council and the Legislative Reference Bureau

discussing legislative subpoena power; (3) the October 4, 2021 subpoena issued to Mayor Rhodes-Conway; and (4) the October 21, 2021 email from Gableman to the City Attorney of Madison regarding rescheduling of the person most knowledgeable deposition.

74. Gableman provided no other information to the court in support of his Madison Petition.

75. Gableman omitted material information from his Madison Petition.

76. Gableman failed to fully inform the Court of the substantial discussion between the Madison City Attorney and the Office of Special Counsel regarding compliance with the subpoenas, the agreements they reached in those discussions or of the voluminous document production made by Madison pursuant to those agreements. The Madison Petition mentioned only the subpoena to Mayor Rhodes-Conway and the October 21, 2021, email regarding the "person most knowledgeable" deposition described above.

77. Gableman also failed to inform the court of parallel, potentially dispositive litigation ongoing in Dane County. The Dane County case involved the question whether the subpoenas that had been served on the city clerks, mayors and "persons most knowledgeable" for Madison, Green Bay, Kenosha, Milwaukee and Racine and two officials at the Wisconsin Election Commission were valid under Wisconsin law.

78. On October 21, 2021—40 days before Gableman filed his Madison Petition—the Wisconsin Election Commission (WEC), represented by the Wisconsin Department of Justice, had filed suit against Gableman's Office of Special Counsel in Dane County Circuit Court Case No. 2021 CV 2552. In that suit, WEC sought a judicial determination that the subpoenas issued to WEC were invalid, and requested an injunction against enforcing them.

79. The Wisconsin Department of Justice challenged the validity of the subpoenas on multiple grounds: (1) the subpoenas called for an appearance before the Special Counsel and not a legislative committee; (2) the deposition topics described in the subpoenas were too vague to meet due process requirements; (3) the subpoenas were for the purpose of law enforcement, not legislative fact finding; and (4) the document requests with the subpoenas were impermissibly overbroad, vague and burdensome.

80. When Gableman filed his Madison Petition against Mayor Rhodes-Conway, he knew a hearing on WEC's motion for an injunction was pending. He failed to include that information in the Madison Petition, and did nothing to inform the Waukesha County Circuit Court of it.

**Gableman also Issued Subpoenas to City of Green Bay Officials.**

81. On September 28, 2021, Vos and Blazel, at Gableman's request, issued more subpoenas. One was a subpoena *duces tecum* directed to the Clerk of the City of Green Bay. It commanded the

production of documents and an appearance for a deposition before the Special Counsel on October 15, 2021.

82. On October 4, 2021, Vos and Blazel issued two more subpoenas to Green Bay officials. One commanded the Mayor of Green Bay, Eric Genrich, to appear before the Special Counsel for a deposition on October 22, 2021, and to bring certain documents with him to the deposition. The other commanded the City of Green Bay to cause "the person most knowledgeable in regard to the November 2020 General election" to appear before the Special Counsel for a deposition on October 22, 2021. That subpoena also required the designated "person most knowledgeable" to bring certain documents to the deposition.

83. The document request included with the two October 4<sup>th</sup> subpoenas was substantially similar to the document request included with the September 28<sup>th</sup> subpoena.

84. On October 5, 2021 the Green Bay City Council (City Council) met to decide whether to hire outside counsel to represent the City of Green Bay (Green Bay) in responding to the September 28<sup>th</sup> subpoena.

85. At the time the meeting was officially noticed, the September 28<sup>th</sup> subpoena was the only one that had been served, and therefore the only one Green Bay was aware of.

86. Gableman and another member of the Office of Special Counsel's staff attended the October 5<sup>th</sup> City Council meeting.

Gableman asked to address the City Council on whether Green Bay should hire outside counsel to respond to the subpoena. He was permitted to speak.

87. Gableman urged the City Council not to hire counsel to represent Green Bay in response to his subpoenas.

88. Gableman told the City Council he had served Mayor Genrich and one other city official with subpoenas in addition to the subpoena served on Green Bay.

89. Mayor Genrich responded. He told Gableman that he—Genrich—had not yet been served with a subpoena.

90. Gableman then stated the subpoena would be served the next day.

91. After considering public comment, the City Council passed a resolution retaining Law Forward, Stafford Rosenbaum LLP, and States United Democracy Center to represent Green Bay and Mayor Genrich in responding to the subpoenas.

92. Gableman and the Office of Special Counsel staff person were present when the City Council passed that resolution

93. On October 6, 2021, the Wisconsin Legislative Reference Bureau sent a responsive memo to a member of the Assembly Elections Committee. The member had asked whether the subpoenas recently issued at the request of Gableman, requiring appearances before the Special Counsel, were valid and complied with Wisconsin law.

94. The memo noted that a strict reading of the statute authorizing legislative subpoenas requires that such subpoenas call for an appearance before a legislative committee, not a "Special Counsel."

95. The memo further noted that, nonetheless, a court "may refrain" from interfering with the process selected by another branch of government by enforcing this requirement.

96. The memo concludes that a court "might" find the subpoenas valid by interpreting an appearance before the Special Counsel as an appearance before a legislative committee.

**The Resulting, Substantial Discussion Between Green Bay's Retained Attorneys and the Office of Special Counsel Regarding Compliance with the Subpoenas, the Agreements They Reached, and Gableman's Public Statements Regarding Those Agreements.**

97. On October 7, 2021, Jeffrey Mandell (Mandell), one of the attorneys retained to represent the City of Green Bay and its officials, including Mayor Genrich, called the Office of Special Counsel. He identified himself as one of the lawyers representing Green Bay with respect to the subpoenas to the city, the City Clerk and Mayor Genrich. He said Green Bay needed extensions of time with respect to all three subpoenas. He was told he would receive a call back later that day. He confirmed that conversation in an email to the Office of Special Counsel.

98. On October 8, 2021, Mandell spoke by telephone with Andrew Kloster (Kloster) of the Office of Special Counsel. Mandell

told Kloster Green Bay considered the subpoenas invalid for several reasons, including their requirement of 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.

99. Mandell and Kloster reached an agreement on October 8. It provided that the City of Green Bay, without waiving its objections to the validity of the subpoenas, would produce to the Office of Special Counsel copies of (1) all documents that the City had previously produced in response to open records requests it had received relating to the November 2020 election; and (2) all Green Bay filings from litigation related to the election and certain other public documents regarding Green Bay's administration of the November 2020 election.

100. The agreement also provided that: (1) the Office of Special Counsel agreed that Green Bay need not produce any witnesses to testify as scheduled by the subpoenas; (2) the Office would review the documents produced by Green Bay; and (3) after that review, if the Office of Special Counsel decided to seek additional documents or testimony, then it would provide specific topics on which such documents or testimony was sought.

101. Shortly after the October 8, 2021, conversation with Lenz, Kloster emailed Mandell to "memorialize what we discussed."

102. In pertinent part, Kloster's email stated that Green Bay would produce "all responsive communications you may reasonable produce by next Friday, October 15<sup>th</sup>, specifically including but not limited to the open records productions you have already made" and the person delivering the documents only needed to "sign in and confirm delivery of the physical copy." Kloster's email also stated that "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."

103. Later that day, Mandell responded to Kloster's email "to clarify some slight inaccuracies in [Kloster's] summary of [that morning's] conversation." Mandell said the agreement was that "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." Mandell also said 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 also stated that "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."



104. On October 7, Gableman told the press that 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.

105. Aware of Gableman's public comments, Mandell noted they were consistent with the agreement he had reached with the Office of Special Counsel.

106. On October 11, 2021, the Wisconsin Department of Justice—representing the Wisconsin Elections Commission and its administrator in response to other subpoenas issued by the Office of Special Counsel—sent a letter to Gableman raising multiple legal challenges to the validity of those subpoenas. See paras. 73-77, *supra*.

107. The Wisconsin Department of Justice's challenges included: (1) the deposition topics described in the subpoenas were too vague to meet due process requirements; (2) the subpoenas were for law enforcement purposes, not legislative fact finding; (3) the subpoenas improperly called for testimony before the Special Counsel and not a legislative committee; and (4) the document requests with the subpoenas were impermissibly overbroad, vague and burdensome.

108. These legal challenges also applied to the subpoenas issued to Green Bay. Mandell included them in the reasons he gave Kloster as to why Green Bay considered the subpoenas invalid and

unenforceable.

109. Also on October 11, 2021, State Representative Janel Brandtjen, Chair of the Assembly Committee on Campaigns and Elections, issued a press release stating: "The current subpoenas have not been approved by the Assembly's Campaigns and Elections Committee that Justice Gableman is supposed to serve, nor have the subpoenas even been submitted to the committee."

110. Consistent with Mandell's and Kloster's agreement, Law Forward transmitted a computer flash drive to the Office of Special Counsel on October 14, 2021. It contained 19,288 pages of documents from the City of Green Bay relating to the November 2020 election.

111. The documents produced included: (1) all materials produced by Green Bay in response to election related Wisconsin Public Records Law requests between January 1, 2021 and September 30, 2021; (2) many of the record requests themselves (the remaining records requests were produced in supplemental productions); (3) filings made by Green Bay in election related litigation; (4) a memorandum from the City Attorney to the Common Council; (5) meeting minutes from Green Bay's Ad Hoc Committee on Elections; and (6) meeting minutes from the Common Council touching on election related subjects.

112. In the cover letter transmitting the flash drive to the Office of Special Counsel, a Law Forward attorney restated Green Bay's understanding of the prior agreement reached between the

Special Counsel's office and Green Bay; specifically, that as a result of the document production, "neither further document production nor witness attendance is necessary at this time in response to the Special Counsel's inquiries of September 30th and October 6th. 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."

113. 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."

114. On October 15, 2021, Gableman told the press the subpoenas had been complied with. Aware of Gableman's public comments, Green Bay city attorneys understood them to confirm that the Special Counsel agreed that Green Bay had complied with the agreement made with the Office of Special Counsel.

115. On October 19, 2021, Green Bay City Attorney Vanessa Chavez announced her resignation, effective November 19, 2021.

116. On October 20, 2021, Office of Special Counsel Attorney Carol Matheis (Matheis) emailed Ms. Chavez. The email identified

the sender only as 3@wispecialcounsel.org and was signed "Carol M." Sent to Ms. Chavez's email address as City Attorney, it became caught in the email system's "spam" filter.

117. Matheis's 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 Nov. 15. Please contact me to discuss at your earliest convenience."

118. Matheis's email referred only to the "person most knowledgeable" subpoena. It made no mention of the subpoenas to Mayor Genrich or the Green Bay City Clerk, or of any continued desire to depose either one of them.

119. By emailing the Green Bay City Attorney, the Office of Special Counsel communicated directly with a person known to be represented by counsel. That violated the specific instructions Law Forward had given that any communications regarding the subpoenas to Green Bay and/or its officials should be directed to Law Forward.<sup>2</sup>

120. Law Forward and Ms. Chavez never authorized or consented to have the Office of Special Counsel contact her, or any other

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<sup>2</sup> See also SCR 20:4.2(a) (prohibiting communication "about the subject of the representation with a person the lawyer knows to be represented by another lawyer in in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order").

Green Bay city official, regarding the subpoenas issued to Green Bay and its officials.

121. The statement in Matheis's email that Ms. Chavez had "been in discussions" with someone from the Office of Special Counsel about rescheduling "the depositions scheduled for this Friday, October 22, 2021" is false. Green Bay's outside counsel handled all those discussions. Ms. Chavez had no discussions with anyone at the Office of Special Counsel about depositions of Green Bay officials.

122. Additionally, because of the agreement reached between Law Forward and the Office of Special Counsel, no depositions were scheduled for October 22, 2021.

123. On October 21, 2021, Gableman emailed Ms. Chavez directly. Like Ms. Matheis's email, this too was a violation of Law Forward's specific instructions and a violation of SCR 20:4.2(a). Gableman's email used Ms. Chavez' email address as City Attorney, and he identified himself as sender using this email address: <Coms@wispecialcounsel.org> this email also ended up in Ms. Chavez's spam filter.

124. 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 as well as to coordinate your client's compliance with the Assembly's subpoena *duces tecum* of that same

date. ... In order to provide our office more time to review the 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 in the deposition, we are continuing the return date from Friday, October 22, 2021 to Wednesday, November 17, 2021 at 9:30 a.m."

125. Gableman's email referred only to the "person most knowledgeable" subpoena. It made no mention of the subpoenas to Mayor Genrich or the Green Bay City Clerk, and said nothing about any desire to interview or depose either of them.

126. Additionally, Ms. Chavez had not been involved in any discussions with the Office of Special Counsel about the subpoenas. Again, Green Bay's outside counsel handled those discussions.

127. The statement in Gableman's email that "we have been trying to work with you in order to schedule the deposition of the person most knowledgeable as described ... in the subpoena of October 4..." is false. No one from the Office of Special Counsel had been trying to work with Ms. Chavez or anyone else in Green Bay to schedule this deposition. That is because the deposition had been cancelled due to the prior agreement between Green Bay and the Office of Special Counsel.

128. The statement in Gableman's email that the Office of Special Counsel had been trying to work with Ms. Chavez regarding compliance with the subpoena *duces tecum* of October 4 is also

false. After the agreement between Green Bay's outside counsel and the Office of the Special Counsel, no one from the Office of Special Counsel had been trying to work with Ms. Chavez or anyone else representing Green Bay regarding compliance with the subpoena *duces tecum*.

129. On October 21, 2021, the Wisconsin Department of Justice, representing the Wisconsin Elections Commission and its administrator, commenced the lawsuit in Dane County Case No. 2021CV2552 against the Office of Special Counsel, challenging the Office's legal authority to issue subpoenas and to take depositions. See paras. 77-80, *supra*.

130. On November 10, 2021, Gableman released the Office of Special Counsel's First Interim Report, and testified before the Assembly Committee on Campaigns and Elections.

131. There is no mention in either the First Interim Report or in Gableman's testimony that he expected any further testimony from any officials of the City of Green Bay or of any further document production from Green Bay.

132. Green Bay's outside attorneys at Law Forward reviewed the First Interim Report and Gableman's November 10, 2021, testimony. They found it consistent with the prior agreement that there would be no further request for documents, and no testimony sought from Green Bay officials unless, after reviewing the documents produced by Green Bay, the Office of Special Counsel

made a request specifying, among other things, specific topics on which further information is sought.

133. On November 19, 2021—the effective date of Ms. Chavez’s resignation as Green Bay City Attorney—she discovered the October 20, 2021, email from “Carol M” and the October 21, 2021 email from Gableman in her spam filter.

134. On November 23, 2021, Attorney Daniel Lenz (Lenz) of Law Forward sent a letter (the letter was dated November 19<sup>th</sup> but was not sent until November 23<sup>rd</sup>), to Gableman informing him of Ms. Chavez’s resignation as Green Bay City Attorney, and her recent discovery in her spam filter of the emails from “Carol M.” and Gableman.

135. 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.”

136. Neither Gableman nor anyone else at the Office of Special Counsel responded to Lenz’s November 23<sup>rd</sup> letter.

137. Between October 14, 2021 and November 29, 2021, Gableman and the Office of Special Counsel made no attempt to “reach an understanding of the scope and nature of topics to be addressed” in the person most knowledgeable deposition. Other than the



communications described above, there were no other communications between the Office of Special Counsel and any attorneys representing the City of Green Bay or any of its officials.

138. Neither Gableman nor anyone else from the Office of Special Counsel informed Green Bay that the Office had completed its review of the documents produced by Green Bay, and had decided to seek additional documents or any testimony from Green Bay or any of its officials.

139. Before November 29, 2021, neither Gableman nor anyone else from the Office of Special Counsel informed Green Bay that they did not agree that Law Forward's letter of October 14<sup>th</sup> accurately stated the agreement between Green Bay and the Office of Special Counsel. Neither Gableman nor anyone else from the Office of Special Counsel informed Green Bay that they no longer intended to abide by that agreement.

**Gableman's Filing of the *Ex Parte* Petition for Writ of Attachment of the Person Against the Mayor of Green Bay.**

140. On November 29, 2021, Gableman filed an *ex parte* Petition for a Writ of Attachment of the Person (Green Bay Petition) in the Circuit Court for Waukesha County, naming Mayor Eric Genrich as respondent. Gableman signed the Green Bay Petition as "Special Counsel to the Wisconsin State Assembly." He included his State Bar Number below his signature.

141. The Green Bay Petition was also a verified pleading, sworn to personally by Gableman.

142. The Green Bay Petition accurately alleges that a subpoena was served on Mayor Genrich commanding him to appear to give testimony and deliver documents on October 22, 2021, but then falsely alleges that this "time and place" for this appearance was "unilaterally continued" to November 15, 2021. This is false because there was never any discussion or communication about continuing Mayor Genrich's deposition. The only mention of continuing a deposition was with respect to the "person most knowledgeable" deposition.

143. The Green Bay Petition also falsely alleges that Mayor Genrich failed to appear on November 15<sup>th</sup> "without justification." This is false because there was no reason for Mayor Genrich to appear on November 15<sup>th</sup>.

144. Gableman attached these documents as Exhibits to the Green Bay Petition: (1) documents establishing the Wisconsin Assembly's appointment of Gableman as Special Counsel; (2) memos from the Legislative Council and the Legislative Reference Bureau discussing legislative subpoena power; (3) the October 4, 2021 subpoena issued to Mayor Genrich; and (4) the October 21, 2021 email from Gableman to City Attorney Chavez regarding rescheduling of the person most knowledgeable deposition.

145. Gableman provided no additional information to the court in support of his Green Bay Petition.

146. Gableman failed to provide material information in his Green Bay Petition.

147. Gableman failed to fully inform the court of all the substantial discussion that had occurred between Green Bay's outside counsel and the Office of Special Counsel regarding compliance with the subpoenas, the agreements they had reached or the voluminous documents that had been produced by Green Bay in compliance with those agreements. The Green Bay Petition mentioned only the subpoena to Mayor Genrich and the October 21, 2021, email regarding the "person most knowledgeable" deposition described above.

148. Gableman also failed to inform the court of the parallel, potentially dispositive litigation ongoing in Dane County Circuit Court Case No. 2021CV2552. That Dane County case involved the question whether the subpoenas served on the city clerks, the Mayors, and the "persons most knowledgeable" for Madison, Green Bay, Kenosha, Milwaukee and Racine and two officials at the Wisconsin Election Commission (WEC) were valid under Wisconsin law. See paras. 77-80, *supra*.

149. On October 21, 2021, the WEC, represented by the Wisconsin Department of Justice, sued the Office of Special Counsel in Dane County Circuit Court Case. No. 2021CV2552 seeking a

judicial determination that the subpoenas issued to WEC were invalid, and seeking an injunction against enforcing them. The Wisconsin Department of Justice challenged the validity of the subpoenas on multiple grounds: (1) they called for an appearance before the Special Counsel and not a legislative committee, (2) the deposition topics described in the subpoenas were too vague to meet due process requirements, (3) the subpoenas were for the purpose of law enforcement, not legislative fact finding, and (4) the document requests with the subpoenas were impermissibly overbroad, vague and burdensome. Gableman did not inform the court of this pending case in the Green Bay Petition.

150. When Gableman filed the Green Bay Petition, he knew there was a pending hearing on WEC's motion for an injunction in the WEC case. He failed to include that information in the Petition, and did nothing else to inform the court of it.

151. The relief sought in Gableman's Petitions was to obtain *ex parte* writs compelling the Waukesha County Sheriff to arrest and confine the Mayors of two major Wisconsin cities. Neither city is located in Waukesha County.

152. Gableman's false statements and omissions described above violated the Rules of Professional Conduct. Additionally, the fact that Gableman sought issuance of the writs in *ex parte* proceedings—that is, without giving the opposing parties notice or

an opportunity to be heard—simply increased the possibility that the Waukesha County Circuit Court would be misled.

**COUNT 1**

153. By filing *ex parte* petitions seeking writs of attachment against the Mayors of Madison and Green Bay that contained false statements of fact, **Gableman violated SCR 20:3.3(a)(1)**<sup>3</sup> **and SCR 20:8.4(c)**.<sup>4</sup>

**COUNT 2**

154. By filing *ex parte* petitions seeking writs of attachment against the Mayors of Madison and Green Bay, and by failing to inform the tribunal of all material facts known to him that would enable the tribunal to make an informed decision, **Gableman violated SCR 20:3.3(d)**<sup>5</sup> **and SCR 20:8.4(c)**.<sup>6</sup>

**REGARDING COUNT THREE**

**Gableman's Public Comments About the Mayors of Madison and Green Bay, and Other Election Officials.**

155. On November 10, 2021, Gableman appeared before the Assembly Committee on Elections and Campaigns (Assembly Committee) and gave public testimony regarding the investigation. Among other

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<sup>3</sup> SCR 20:3.3(a)(1) provides: "A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal."

<sup>4</sup> SCR 20:8.4(c) provides: "It is professional misconduct for a lawyer to: (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

<sup>5</sup> SCR 20:3.3(d) provides: "(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."

<sup>6</sup> SCR 20:8.4(c) provides: "It is professional misconduct for a lawyer to: (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

topics, he addressed his investigation of grants provided to several Wisconsin municipalities by the Center for Tech and Civic Life (CTCL), a foundation that received funding from, among others, Mark Zuckerberg and Priscilla Chan.

156. The 2020 Wisconsin General Election occurred during the worldwide COVID pandemic. CTCL made its grants for the stated purpose of assisting election officials with the increased costs associated with carrying out Wisconsin's election during the pandemic. Approximately 200 Wisconsin municipalities and counties received CTCL grants for the 2020 election.

157. One subject of Gableman's investigation was whether the CTCL grants were used by some communities for partisan political purposes. As part of this investigation, Gableman requested and served legislative subpoenas on Megan Wolfe of the Wisconsin Election Commission, and on the Mayors and other city officials of Milwaukee, Racine, Kenosha, Madison and Green Bay.

158. In his testimony to the Assembly Committee, Gableman stated that there was an "organized cover-up by Administrator Wolfe and others - as evidenced by the obstruction of the Assembly's subpoenas," and said 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."

159. Gableman's testimony that Ms. Wolfe, WEC and/or the cities had hired "high-priced lawyers" was false. Ms. Wolfe and WEC were represented by the Wisconsin Department of Justice, not by any "high-priced lawyers." Likewise, Madison, Milwaukee, Racine and Kenosha were represented by their respective city attorneys, not outside counsel. Gableman knew all of this.

160. The City of Green Bay was the only entity represented by outside counsel. But counsel was working on a *pro bono* basis. Gableman knew this as well. He attended the Green Bay City Council meeting where the decision to retain these lawyers was made.

161. Gableman's testimony that there was an "organized cover-up" involving the five cities was also false. As of November 10<sup>th</sup>, the cities had negotiated agreements with the Office of Special Counsel regarding producing documents requested by the OSC, and had complied with those agreements.

162. On December 1, 2021, two days after he filed the *ex parte* Petitions for Writs of Attachment against Mayors Rhodes-Conway and Genrich, Gableman again gave public testimony before the Assembly Committee regarding the investigation and the subpoenas he had served as part of that investigation.

163. In his testimony, Gableman publicly announced the filing of his Petitions for Writs of Attachment.

164. At this point, neither Gableman nor anyone else at the Office of Special Counsel had informed Mayors Rhodes-Conway and

Genrich, or their attorneys, about the Petitions for Writs of Attachment, nor had those petitions been served.

165. In his testimony, Gableman did not inform the Assembly Committee and the public of the actual subpoena responses his office had received from Madison and Green Bay, the agreements his office had negotiated with the attorneys representing those cities, or the fact that each city had produced thousands of pages of documents in response to the subpoenas.

166. Gableman also did not inform the Assembly Committee and the public that the Office of Special Counsel had negotiated agreements with both Madison and Green Bay that made the appearances of Mayors Rhodes-Conway and Genrich unnecessary.

167. Gableman did not inform the Assembly Committee and the public that both Madison and Green Bay had produced thousands of pages of documents showing how much money each city had received in CTCL grants and how that money was spent.

168. Gableman also failed to inform the Assembly Committee of his October 21, 2021, email proposing to delay the "person most knowledgeable" depositions in order "to give both parties additional time to reach an understanding of the scope and nature of the topics to be addressed in the [person most knowledgeable] deposition."

169. Gableman also failed to inform the Assembly Committee he had made no additional effort to reach such an agreement, even



though the attorneys for both cities had stated they were awaiting information on these issues from Gableman before responding to his deposition request.

170. In his testimony, Gableman intentionally made false claims about the responses of Mayors Rhodes-Conway and Genrich to their subpoenas. His testimony falsely stated that the Mayors had failed to fulfill a legal obligation in responding to the subpoenas, that they had done so as part of a "cover-up," and that this alleged "cover-up" was for the purpose of hiding wrongdoing by the Mayors and others.

171. Gableman falsely testified he had "received straightforward cooperation from the City of Kenosha, and little or no cooperation from Madison, Milwaukee, Racine and Green Bay." As shown above, legal counsel for Madison and Green Bay had negotiated the manner of compliance with Gableman and the Office of Special Counsel and had complied with all of the promises made as part of that negotiation.

172. Gableman falsely testified he had filed his *ex parte* Petitions for Writs of Attachment against Mayors Rhodes-Conway and Genrich because "of all the clerks and all the mayors, those two 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." Again, as shown above, these

statements were false because legal counsel for Mayors Rhodes-Conway and Genrich had negotiated agreements with Gableman and the Office of Special Counsel making the appearances of the Mayors for depositions unnecessary, and because the documents produced by the cities detailed how the money from the CTCL grants was spent.

173. Gableman made other false statements during his testimony, including:

174. First: "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."

175. Second: "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."

176. Third: "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."

177. Fourth: "Let's talk about cover-ups because that is exactly what the Wisconsin Election Commission, its administrator [Meaghan Wolf], and Mayors Rhodes-Conway and Genrich 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."

178. Fifth: "[T]he 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."

179. Gableman did not characterize his assertions as opinions. He presented them as objective, proven facts. His assertions were public accusations of improper, possibly unlawful activity by Mayors Rhodes-Conway and Genrich. Gableman had no tangible, verifiable, objective, persuasive evidence to support his assertions.

180. Gableman's accusations caused serious reputational damage to the public officials involved.

181. And through Gableman's filing of his Petitions for Writs of Attachment of the Person, he publicly sought to jail the Mayors

of Madison and Green Bay, despite all they and their attorneys had done to comply with Gableman's subpoenas.

### COUNT 3

182. By making multiple false statements of material fact in his public testimony to the Assembly Committee about the responses of the Mayors of Madison and Green Bay to subpoenas he had issued to them, and by using means that had no substantial purpose other than to embarrass or burden the third persons he named in his testimony, **Gableman violated SCR 20:4.1(a)(1),<sup>7</sup> SCR 20:4.4(a),<sup>8</sup> and SCR 20:8.4(c).<sup>9</sup>**

### REGARDING COUNTS 4-6

**Litigation Between American Oversight and the Office of Special Counsel Preceding the June 10, 2022, Hearing Before Dane County Circuit Judge Frank Remington.**

183. In the First Amendment to the Coordinating Attorney Agreement, Gableman contractually agreed to serve as Custodian of Records for the Office of Special Counsel. In that capacity, he was responsible for overseeing the Office of Special Counsel's responses to requests made under Wisconsin's Open Records Law.

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<sup>7</sup> SCR 20:4.1(a) provides: "(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 3<sup>rd</sup> person."

<sup>8</sup> SCR 20:4.4(a) provides: "(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay or burden a 3<sup>rd</sup> person."

<sup>9</sup> SCR 20:8.4(c) provides: It is professional misconduct for a lawyer to: (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

184 In its response to certain requests made by a public interest entity—American Oversight—the Office of Special Counsel admitted that it had responsive documents, but withheld some of those documents from production based on various asserted objections.

185. On December 20, 2021, American Oversight sued the Office of Special Counsel, alleging it had inappropriately withheld these 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. Judge Remington ordered the Office of Special Counsel to file the withheld documents under seal so he could review them in camera.

186. The Office of Special Counsel filed documents, under seal, in response to Judge Remington's order. Judge Remington reviewed the documents and the Office's stated reasons for withholding them from production.

187. On March 22, 2022, Judge Remington issued a decision rejecting all of the reasons the Office of Special Counsel gave for refusing to produce the documents.

188. Judge Remington also found the Office of Special Counsel had acted "arbitrarily and capriciously" in withholding the documents, and assessed punitive damages against it.

189. The Office of Special Counsel filed a motion asking Judge Remington to stay his March 2, 2022 order pending appeal.

190. On March 8, 2022, Judge Remington heard oral argument on the Office of Special Counsel's motion to stay the March 2 Order.

191. Later that day, Judge Remington issued a written order denying the motion for stay. He then unsealed the withheld documents that had been filed under seal.

192. When American Oversight reviewed the previously withheld documents, it realized there were several more requested documents that must exist, but were not part of the production made to Judge Remington for in camera inspection.

193. On March 25, 2022, American Oversight's attorneys sent a letter to the Office of Special Counsel outlining its concerns about the completeness of the prior production.

194. On April 8, 2022, an attorney for the Office of Special Counsel responded by acknowledging that it did possess some additional documents that were responsive to Judge Remington's order but had not been produced, stating that this failure was "inadvertent."

195. The Office of Special Counsel's attorney also informed American Oversight that there were also some documents that would have been responsive to the requests but that these documents could not be produced because they had been deleted or destroyed.

196. The attorney explained that this happened for two reasons. First, when the Office of Special Counsel 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 this was done, attachments to the electronic version were not always copied, and thus those attachments were deleted when the electronic document was deleted.

197. The attorney also informed American Oversight that the second reason why some documents were deleted or destroyed was because the Office's policy was to not retain documents referring to matters that the Office was "not intending to further investigate, and is not intending to rely upon for its recommendations or reports."

198. On April 19, 2022, the Office of Special Counsel appealed Judge Remington's March 2 and 8, 2022 orders.

199. On April 20, 2022, American Oversight filed a motion with Judge Remington, informing him of its correspondence with the Office of Special Counsel about missing documents, and asking him to modify his March 2 Order (now on appeal) to provide it with additional relief, and to schedule further proceedings to consider the possibility of contempt findings.

200. 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.

201. American Oversight subpoenaed Gableman to be a witness at the June 10th hearing. Gableman moved to quash the subpoena. Judge Remington denied Gableman's motion.

**Gableman's Testimony and Conduct on the Witness Stand at the June 10, 2022 Hearing.**

202. Before the hearing, the Office of Special Counsel conceded that it had not fully complied with Judge Remington's prior order because it had "inadvertently" failed to produce all of the responsive documents in its possession. The Office also said that it had since produced whatever responsive documents still existed.

203. At the hearing, the attorney for the Office of Special Counsel argued that there was no need for an evidentiary hearing since all the responsive documents had now been produced, and the question of whether documents had been improperly destroyed as not properly before the Court because American Oversight's lawsuit had not alleged that documents were improperly destroyed.

204. Judge Remington disagreed. He ruled that a hearing was still needed to determine if there was any ongoing contempt and/or any continuing violations of law.

205. The hearing received extensive media coverage, including reporters with television cameras and microphones.

206. American Oversight called Gableman as a witness at the hearing. He testified as follows:

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.

207. The transcript demonstrates Gableman's verbal responses and statements. In his June 15, 2022, written decision and order following the hearing, Judge Remington also addressed Gableman's

physical conduct and demeanor while on the bench. Judge Remington said Gableman made his assertions of judicial bias and partiality and of "railroading" him in "sneering" fashion.

208. Judge Remington's written decision also made findings about the tone of Gableman's speech, his physical bearing, and his rudeness. Judge Remington wrote that the transcript "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."

**Gableman's Additional Statements and Conduct Regarding Judge Remington's Integrity and Alleged Bias, and Gableman's Derogatory and Demeaning Statements About Both Judge Remington and Opposing Counsel.**

209. In addition to Gableman's testimony and the comments he made from the witness stand, Gableman also made public comments about Judge Remington and opposing counsel during a brief recess in the proceeding, and again to the press immediately after the hearing.

210. When he made his recess comments, Gableman knew the microphone in front of him was "live," and transmitting his comments to the entire courtroom and assembled media.

211. These are Gableman's recess comments. Ronald Stadler is another attorney participating in the hearing and representing Assembly Speaker Robin 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.

212. In his June 15 order, Judge Remington said Gableman made his remarks, which appear to impersonate Judge Remington inviting opposing counsel to his chambers, in a "mocking" fashion.

213. Gableman's remarks impersonating Judge Remington not only disrespected Judge Remington and questioned his integrity,

they also demeaned and belittled opposing counsel by making allegations of improper collusion with the court and by portraying her as an incompetent lawyer whose only role was to aid Judge Remington in his bias.

214. In his June 15<sup>th</sup> order, Judge Remington described Gableman's comments as "an insult to Atty. Westerberg, by their very suggestion that she is not capable of litigating without the help of the judge. The sophomoric innuendo about Atty. Westerberg coming back to chambers is a sad reminder that in 2022, woman lawyers still have to do more than be excellent at their job." Judge Remington concluded by calling Gableman's comments "misogynistic."

215. Gableman's recess remarks added nothing of value to the purpose of the hearing; that is, to determine whether there was any ongoing contempt and/or any continuing violations of law on the part of the Office of Special Counsel pertaining to Open Records.

216. After the hearing concluded, Gableman spoke to the press and made these additional comments:

... 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 office of special counsel 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? ...

**COUNT 4**

217. By knowingly disobeying Judge Remington's directions and orders from the bench during his testimony on June 10, 2022, by engaging in conduct intended to disrupt that tribunal, and by failing to maintain the respect due to Judge Remington and opposing counsel, **Gableman violated SCR 20:3.4(c),<sup>10</sup> SCR 20:3.5(d),<sup>11</sup> SCR 20:8.4(g),<sup>12</sup> and SCR 40:15.<sup>13</sup>**

**COUNT 5**

218. By making false statements concerning Judge Remington's integrity and alleged bias, **Gableman violated SCR 20:8.2(a),<sup>14</sup> SCR 20:8.4(g),<sup>15</sup> and SCR 40:15.<sup>16</sup>**

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<sup>10</sup> **SCR 20:3.4(c) 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."

<sup>11</sup> **SCR 20:3.5(d) provides:** "A lawyer shall not: (d) engage in conduct intended to disrupt a tribunal."

<sup>12</sup> **SCR 20:8.4(g) provides:** "It is unprofessional conduct for a lawyer to: (g) violate the attorney's oath."

<sup>13</sup> **SCR 40:15 provides in pertinent part:** "I will maintain the respect due to courts of justice and judicial officers."

<sup>14</sup> **SCR 20:8.2(a) provides in pertinent part:** "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."

<sup>15</sup> **SCR 20:8.4(g) provides:** "It is unprofessional conduct for a lawyer to: (g) violate the attorney's oath."

<sup>16</sup> **SCR 40:15 provides in pertinent part:** "I will maintain the respect due to courts of justice and judicial officers."



## COUNT 6

219. By making false, derogatory, and demeaning public statements about opposing counsel, **Gableman violated SCR 20:8.4(g)**<sup>17</sup> and SCR 40:15.<sup>18</sup>

## REGARDING COUNT 7

### **Gableman's Lack of Competence in Wisconsin's Open Records and Record Retention laws.**

220. As one of its purposes, the First Amendment to the Coordinating Attorney Agreement "confirm[s] that Gableman shall act as the Custodian of Records with regard to the investigation that is the subject of the IC Agreement."

221. This provision was important. It was anticipated that the investigation would generate a significant number of Open Records requests (and, in fact, by the time the First Amendment was signed, the Office of Special Counsel had already received four such requests).

222. On October 1, 2021, the Wisconsin Legislative Council issued a memo concluding that the Office of Special Counsel was subject to both the Public Records Retention Law (Wis. Stat. §16.61, defining public records that must be retained) and the Public

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<sup>17</sup> SCR 20:8.4(g) provides: "It is unprofessional conduct for a lawyer to: (g) violate the attorney's oath."

<sup>18</sup> SCR 40:15 states in provides part: "I will maintain the respect due to courts of justice and judicial officers. I will abstain from all offensive personality."

Records Law (Wis. Stat. §§19.31 -19.39, defining how records custodians must respond to requests for public records).

223. Attorney Steve Fawcett, Vos's legal counsel and the person designated by Vos as Gableman's point of contact for the investigation, sent the Legislative Council memo to Gableman on October 12, 2021.

224. On October 1, 2021, Gableman signed an Open Records Policy he had prepared for the Office of Special Counsel. His 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 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.

225. As Custodian of Records, Gableman was responsible for instructing staff of the Office of Special Counsel on compliance with Wisconsin's Public Records Retention and Open Records Laws.

226. Gableman's instructions to staff regarding maintaining records and responding to open records requests were contrary to law. As a result, the Office of Special Counsel failed to comply with both the Wisconsin Open Records Law and the Wisconsin Records Retention Law, incurring penalties and assessment of attorney fees.

227. As noted above, on December 20, 2021, American Oversight sued the Office of Special Counsel, alleging the Office had improperly refused to produce documents requested under the Open Records Law. *American Oversight v. Office of Special Counsel*, Dane County Case No. 2021CV3007.

228. The circuit court agreed with American Oversight, and found the Office of Special Counsel's responses to American Oversight's Open Records request were "arbitrary and capricious," and justified punitive damages. Later, the Court also found the Office in contempt for failing to comply with an order of the court.

229. Ultimately, the Office of Special Counsel was ordered to pay \$170,031.56 in punitive damages and attorney fees for these violations.

230. As Custodian of Records, Gableman, was also responsible for the Office of Special Counsel's compliance with the Records Retention Law, Wis. Stat. §16.61.

231. Gableman instructed the staff of the Office of Special Counsel they did not have to retain documents which 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."

232. When the Office of Special Counsel was organized under Gableman's direction, it obtained and used an email system with a feature that automatically deleted emails after a period of time.

233. On January 19, 2022, Zachary Niemierowicz, an employee of the Office of Special Counsel, sent Gableman an email stating: "We have discussed the topic of our emails automatically deleting in the wispecialcounsel.org email accounts. I have contacted Steve Libby to address this issue multiple times over the past 5 weeks... We are currently printing any documents received by email that are relevant to our investigation so that we do not lose them when they are removed from our email."

234. When the Office of Special Counsel received an Open Records request, it sometimes made hard copies of electronic documents that were responsive to the requests and then deleted the electronic versions of those documents, thus destroying any additional information imbedded in the electronic version ("metadata").

235. With respect to emails, this practice also sometimes resulted in attachments to emails being deleted with no hard or electronic copy retained.

236. When these practices came to light, the Office of Special Counsel was sued for violations of the Records Retention Law in *American Oversight v. Office of Special Counsel*, Dane County Circuit Court Case No. 2022CV1583.

237. Gableman defended claims that the Office of Special Counsel had violated the Records Retention Law by asserting that the Office was not a state agency and, therefore, was not subject

to the Records Retention Law.

238. Gableman's assertion was contrary to the opinion given in the October 1, 2021 memo from the Legislative Council, which concluded that the Office of Special Counsel was a state agency.

239. Gableman himself contradicted his contention that the Office of Special Counsel was not a state agency when he testified before the Assembly Committee that "[t]he Office of Special Counsel is an authorized agency of the State of Wisconsin."

240. Gableman also contradicted his contention when he entered into several contracts which described the Office of Special Counsel as "an agency of the Wisconsin state government."

241. After Vos fired Gableman, the leaders of the Assembly settled the Records Retention lawsuit by stipulating that the Office of Special Counsel had "previously violated the Public Records Retention Law by destroying records without following the procedures required under the Public Records Retention Law."

242. Under the settlement, the Office of Special Counsel was ordered to pay \$60,146.34.

#### **COUNT 7**

243. By contracting to serve as the Custodian of Records for the Office of Special Counsel, and by failing to adopt and implement policies, and employ technology, to ensure compliance with

Wisconsin's Records Retention and Open Records Laws, **Gableman violated SCR 20:1.1.**<sup>19</sup>

#### REGARDING COUNT 8

#### **Gableman's Efforts to Expand the Objectives and Timeframe of the Representation.**

244. The period following the 2020 Wisconsin General Election was politically charged and contentious. Some supporters of former President Trump sought to overturn the results of the Presidential election in Wisconsin and other states, based on their claims of election fraud.

245. In addition, because the election had taken place during the COVID-19 pandemic, and election officials had taken several steps to modify traditional procedures in response to the pandemic, there were questions about whether election officials had acted within the law in doing so.

246. Before agreeing to undertake the representation in these matters, Gableman had worked in the Trump Administration in the Office of Personnel Management. Gableman also spoke at a pro-Trump rally staged in Milwaukee on November 7, 2020. He was quoted in the press as saying, "I don't think anyone here can think of anything more systematically unjust than a stolen election."

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<sup>19</sup> 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."

247. Gableman was also quoted in the press as saying, "Our elected leaders—your elected leaders—have allowed unelected bureaucrats at the Wisconsin Elections Commission to steal our vote[.]"

248. The Committee on Assembly Organization authorized 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." Pursuant to this authorization, Vos hired Gableman to be the "Coordinating Attorney" for this investigation. A member of Vos's staff—Attorney Steve Fawcett—was designated to be Gableman's point of contact with the Assembly.

249. Gableman signed the Coordinating Attorney Agreement on June 26, 2021. Before signing, he and Vos discussed the objective of the investigation.

250. Vos defined the objective as gathering facts about how recent elections in Wisconsin had been administered, and to suggest possible legislative changes for the Assembly to consider.

251. Vos made clear the objective was prospective, meaning it was to assist the Assembly in determining what legislative changes, if any, were needed in the administration of future elections.

252. Significantly, Vos's stated objective did not include (1) supporting an effort to overturn the 2020 Presidential elections

results; (2) determining whether the election was "stolen;" (3) analyzing whether it was possible to decertify the Wisconsin Electors; or (4) holding officials accountable for prior actions in administering elections.

253. The term of the Coordinating Attorney Agreement was four months (July, August, September, and October 2021). Gableman was to be paid \$11,000 for each of the four months. Under the Coordinating Attorney Agreement, Gableman was to supply all equipment and supplies needed for him to carry out his duties, and was responsible for all related expenses, such as mileage and hotel stays.

254. Given the objective of the investigation and the time frame, Gableman was to prepare and submit to Vos a "final report" of the investigation by October 31, 2021. This would have provided the Assembly with sufficient time to consider the report, and possibly enact legislative changes before the 2021-2022 legislative session ended in early 2022.

255. Before signing the contract, Gableman did not tell Vos that he did not agree with the objectives Vos had outlined, the time frame for submitting the final report, or the compensation to be paid to him. Gableman also did not tell Vos that he intended to enlist public support to pressure Vos to change the objectives of the investigation, increase the budget, or expand the time frame.

256. However, in September 2023, while testifying under oath before the California State Bar Court in a disciplinary proceeding



against former Trump attorney John Eastman, Gableman testified about his conclusions and intentions at the time he signed the Coordinating Attorney Agreement.

257. In his California testimony, Gableman said that from the very beginning of his representation of the Assembly, he did not view the objectives and terms of the original contract as "serious."

258. Gableman further testified that "I took it knowing that I was going to have to attempt to persuade Speaker Vos, and perhaps - and not perhaps - I knew I was going to have to enlist support among the public to persuade Speaker 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."

259. After the signing of the Coordinating Attorney contract, Gableman requested more money and more time. 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 \$11,000 monthly compensation) by one month, to November 30, 2021.

260. The contract amendment also provided that the Assembly would pay for various expenses such as rent, office equipment,

telephones and travel, which had previously been expenses to be paid by Gableman.

261. Gableman failed to complete a final report by November 30. He continued to work and discuss an additional amendment with Vos after the contract had expired.

262. In early 2022, Vos and Gableman signed a Second Amendment to the Coordinating Attorney Agreement. The Second Amendment extended the time of the contract to April 30, 2022. It also required Gableman to submit a final report on or before March 1, 2022.

263. On March 1, 2022, Gableman submitted a report entitled "Second Interim Investigative Report on the Apparatus & Procedures of the Wisconsin Election System."

264. Despite Vos's clear, unambiguous instruction that the objective of the investigation was to find facts useful for the Assembly's consideration of prospective legislative changes to election administration, Gableman included in his report an appendix setting forth his legal opinion that the legislature could "decertify" the results of the 2020 Wisconsin General Election for President, in which Joseph Biden had been declared the winner. This was contrary to the agreed-upon objective of the representation.

265. Gableman later explained that he decided to include the "decertification" appendix in his final report because "when we were writing our report I got sick and tired of him [Vos] running around the state and telling people that the legislature did not

have the power to decertify the election ... and I was really upset I wasn't gonna let him get away with another lie ..."

266. As the April expiration date for the Second Amendment approached, Gableman lobbied to get the public to pressure Vos for a further extension. As part of this effort, Gableman appeared on a podcast hosted by Steve Bannon, a former White House and campaign strategist to former President Trump. Gableman urged the listeners to contact Vos and support his effort to extend the investigation going.

267. On May 1, 2022, the Wisconsin Assembly and Consultare/Gableman entered into an Agreement for Legal Services. It extended the term of Gableman's representation to last until the conclusion of all outside lawsuits involving the Office of Special Counsel, unless terminated earlier by either party.

268. In August, 2022, Vos fired Gableman and terminated the Agreement for Legal Services.

269. Gableman was paid a total of \$117,394.95 by the Assembly under the various agreements relating to the investigation.

270. The Assembly paid a total of \$2,344,808.94 for the investigation. This included \$527,867.68 for salary, rent, travel, and outside consultants, and \$1,816,932.26 for hiring outside lawyers to litigate the proceedings initiated by Gableman when he filed the Madison and Green Bay Petitions, defending Gableman and the Office of Special Counsel in lawsuits challenging his handling

of records retention and open records requests, and paying fines, penalties, and attorney fee awards in those cases.

#### COUNT 8

271. By accepting the representation with the undisclosed intent to pursue his personal interests in the investigation, and by enlisting public pressure to force Vos to expand the objectives, expense, and time frame of the investigation, **Gableman violated SCR 20:1.2(a)<sup>20</sup> and SCR 20:1.7(a)(2).<sup>21</sup>**

#### REGARDING COUNT 9

**Gableman's Guest Appearances on Video Programs Promoting Vos's Recall, and Gableman's Revealing of Information About the Representation.**

272. In late spring 2024—during the pendency of this OLR investigation—Vos faced an effort to recall him from his seat in the Assembly.

273. Gableman appeared as a guest on at least two video broadcasts promoting the recall effort. Both were on a program organized by Mike Lindell, a prominent, public supporter of former President Trump.

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<sup>20</sup> SCR 20: 1.2(a) provides in pertinent part: "[a] lawyer shall abide by a client's decisions concerning the objectives of representation."

<sup>21</sup> SCR 20:1.7(a)(2) provides in pertinent part: "(a) Except as provided in par. (b), a lawyer shall not represent a client if 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 personal interest of the lawyer."

274. In his appearances, Gableman publicly expressed his support for the recall effort, and repeated his claim that Vos did not want a "serious" investigation. At one point, Gableman called Vos a "serial liar who is interested only in his personal monetary financial gain."

275. 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 members of Vos's staff at the beginning of the investigation.

276. By publicly discussing this alleged conversation, Gableman revealed information related to his representation of the Assembly.

277. Under SCR 20:1.9(c) (2), information relating to the representation of a former client is protected to the same extent as information relating to the representation of current clients under SCR 20:1.6.

278. The scope of the information protected by the duty of confidentiality "applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source." ABA Comment 3 to Rule 1.6.

279. Gableman did not obtain client consent to reveal this information about the representation.

280. Revealing the information was not impliedly authorized to carry out the representation, and neither of the exceptions stated in SCR 20:1.6 (b) or (c) apply.

281. In addition to Gableman's duty of confidentiality under the Rules of Professional Conduct for Attorneys, the contracts between Gableman and the Assembly contained confidentiality provisions, to which Gableman had agreed.

282. 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."

283. 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."

**COUNT 9**

284. By appearing as a guest on video programs promoting Vos's recall from his Assembly seat and revealing information about the

representation, Gableman violated SCR 20:1.6(a)<sup>22</sup> and SCR 20:1.9(c)(2).<sup>23</sup>

#### REGARDING COUNT 10

**Gableman's Material Misrepresentations to the Office of Lawyer Regulation (OLR) in His Affidavit That "he never engaged in the practice of law" and That His Responsibilities Did Not Include "giving legal advice or representing it or the Assembly in court."**

285. On May 29, 2024, Gableman submitted an affidavit to OLR as part of this investigation. Gableman stated "under penalty of perjury" that "[i]n my position as the head of the Office of Special Counsel 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 it or the Assembly in court. None of the parties involved considered that my appointment established a client-lawyer relationship with anyone."

286. The quoted excerpts from Attorney Gableman's affidavit contain multiple demonstrably false statements.

287. First, Gableman did give legal advice. For example, his March 1, 2022, report opined, among other things, that (a) the CTCL

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<sup>22</sup> SCR 20:1.6(a) 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)."

<sup>23</sup> 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."

grants violated election bribery statutes, (b) drop boxes violated Wisconsin law, (c) WEC unlawfully directed clerks to violate rules relating to nursing homes, (d) WEC unlawfully encouraged evasion of ballot security measures and that certain cities had violated federal and state equal protection laws. An appendix to the report included the advice that, in Gableman's view, the legislature could "decertify" the electors for the 2020 Presidential election.

288. Second, Gableman did represent the Office of Special Counsel and the Assembly by filing pleadings on their behalf, signed by him and including his State Bar Number, in Waukesha County Circuit Court.

289. Third, there are many examples showing that Gableman's sworn statement that "none of the parties involved considered that [his] appointment established a client-lawyer relationship with anyone," is false. For example, Vos, as the duly authorized constituent of the Assembly, and Gableman on behalf of his LLC Consultare, signed contracts for "legal representation for the Assembly" and for "legal services."

290. The first contract, the Coordinating Attorney Independent Contractor Agreement, described Gableman as "Coordinating Attorney."

291. The First Amendment to the Coordinating Attorney Agreement gave Gableman the title "Special Counsel."



292. The "Second Amendment to Agreement," provided in part in Attachment A:

(4) In addition to the foregoing, the Office of Special Counsel 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 Office of Special Counsel

293. The last contract—entitled "Agreement for Legal Services"—was signed by Vos on behalf of the client, the Wisconsin State Assembly, and by Gableman on behalf of Consultare, LLC. The terms of the agreement 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 is 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....

294. The language contained in these contracts, which Gableman was aware of when he signed the affidavit he submitted to OLR, directly rebuts the assertions contained in that affidavit.

295. As part of the investigative process, Gableman was informed of this evidence contrary to his assertions in the affidavit and given a chance to comment, but he did not provide any correction or comment.

#### COUNT 10

296. By misrepresenting in his affidavit to OLR that "he never engaged in the practice of law," and that his responsibilities did not include "giving legal advice or representing it or the Assembly in court," **Gableman violated SCR 20:8.4(h)<sup>24</sup> and SCR 22:03(6).<sup>25</sup>**

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<sup>24</sup> **SCR 20:8.4(h)** provides 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)."

<sup>25</sup> **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."

**WHEREFORE,** the Office of Lawyer Regulation asks the Supreme Court of Wisconsin to find Attorney Michael J. Gableman violated the Supreme Court Rules as alleged in this Complaint; to sanction Gableman; and to grant such other relief as may be just and equitable, including an award of costs.

Dated this 19<sup>th</sup> day of November, 2024.

OFFICE OF LAWYER REGULATION



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