

MEMORANDUM

To: Office of Lawyer Regulation
From: Daniel S. Lenz
Jeffrey A. Mandell
Re: Violations of the Wisconsin Supreme Court Rules of Professional Conduct for Attorneys by Michael Gableman
Date: March 2, 2023

INTRODUCTION

Wisconsin’s Rules of Professional Conduct for Attorneys (the “Rules”) set a high standard: “A lawyer ... is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.” SCR 20 Preamble [1]. “[A] lawyer should further the public’s understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority.” *Id.*, [6]. To that end, “[W]e must have lawyers who not only say, but really believe, that they are ministers of Justice, and not men hired by their clients to circumvent or outwit the law.” *Ellis v. Frawley*, 165 Wis. 381, 161 N.W. 364, 366 (1917). As the United States Supreme Court observed: “lawyers are officers of the court who perform a fundamental role in the administration of justice.” *Spevack v. Klein*, 385 U.S. 511, 524 (1967).

Beginning shortly after the 2020 General Election, a group of attorneys across the country violated these basic tenets and acted to undermine confidence in our democracy and the rule of law. The courts, including those in Wisconsin,¹ uniformly rejected these desperate attempts, and many of the attorneys involved have been referred for professional discipline.²

¹ See, e.g., *Trump v. Wis. Elections Comm'n*, 506 F. Supp. 3d 620 (E.D. Wis. 2020), *aff'd*, 983 F.3d 919 (7th Cir. 2020), *cert. denied*, 141 S.Ct. 1516 (2021); *Feehan v. Wis. Elections Comm'n*, 506 F. Supp. 3d 596 (E.D. Wis. 2020), *petitions for extraordinary relief denied*, No. 20-859 (U.S. Mar. 1, 2021), *vacated on remand after appeal dismissed as moot*, No. 20-cv-1771-PP, ECF No. 95 (E.D. Wis. Mar. 16, 2021); *Wis. Voters Alliance v. Pence*, 514 F. Supp. 3d 117 (D.D.C. 2021); *Trump v. Biden*, Nos. 2020CV2514 & 2020CV7092 (Milwaukee Cnty. Cir. Ct. & Dane Cnty. Cir. Ct. Dec. 11, 2020), *aff'd*, 2020 WI 91, 394 Wis. 2d 629, 951 N.W.2d 568, *cert. denied*, 141 S.Ct. 1387 (U.S. 2021); *Wis. Voters Alliance v. Wis. Elections Comm'n*, No. 2020AP1930-OA (Wis. Dec. 4, 2020); *Trump v. Evers*, No. 2020AP1971-OA (Wis. Dec. 3, 2020); *Mueller v. Wis. Elections Comm'n*, No. 20AP1958 (Wis. Dec. 3, 2020); *Liu v. Wis. Elections Comm'n*, Dane Cnty. Cir. Ct. Case No. 2022CV46 (Oral decision, June 1, 2022).

² The examples are too numerous to list comprehensively, but here are a few: In *Wisconsin Voters Alliance v. Pence*, U.S. District Judge James Boasberg referred Erick Kaardal to the Committee on Grievances. No. 1:20-cv-03791-JEB, 2021 WL 686359 (D.D.C. Feb. 19, 2021). On August 25, 2021, Judge Linda V. Parker sanctioned Sidney Powell, Lin Wood, Howard Kleinhendler, and eight other attorneys, and referred them for discipline. *King v. Whitmer*, 556 F.Supp.3d 680, 734–45 (E.D. Mich. Aug. 25, 2021); *id.* at 689 (“And this case was never about fraud—it was about undermining the People’s faith in our democracy and debasing the judicial process to do so.”). Rudy Giuliani is facing both professional discipline and criminal investigation. Zoe Tillman, *Discipline Cases Against Rudy Giuliani, Jeff Clark Advance*, Bloomberg (Sept. 14, 2022), <https://www.bloomberg.com/news/articles/2022-09-14/legal-discipline-cases-against-rudy-giuliani-jeff-clark-advance>; Adam Klasfeld, *Rudy Giuliani Under Threat of Disbarment After D.C. Bar Committee Finds His Failed 2020 Election Suit in Pa. Broke Ethics Rules*, Law & Crime (Dec. 15, 2022), <https://lawandcrime.com/2020-election/rudy-giuliani-under-threat-of-disbarment-after-d-c-bar-committee-finds-his-failed-2020-election-suit-in-pa-broke-ethics-rules/>; see also Michael S. Schmidt and Luke Broadwater, *For Trump’s Lawyers, Legal Exposure Comes With the Job*, NY Times (Sept. 10, 2022), <https://www.nytimes.com/2022/09/10/us/trump-lawyers-legal-exposure.html> (reporting that 17 lawyers who represented Donald Trump are facing ethical complaints, and that 10 lawyers who “agreed to participate in various plots by Trump and his allies” have been fined or sanctioned).

Even after the bevy of litigation attempting to reverse the election results uniformly failed, these abuses remained part of public life in Wisconsin from July 1, 2021, when Wisconsin Assembly Speaker Robin Vos hired Michael J. Gableman as Special Counsel, until Speaker Vos summarily fired Gableman approximately 13 months later. During this time, Gableman waged a shambolic, dishonest, and destructive campaign against Wisconsin's democracy at taxpayer expense and in the guise of a public official.

The authors of this memorandum, often with co-counsel, represented people and entities that had the unfortunate experience of being targeted by Gableman's sham investigation between September 2021 and his firing in August 2022. We write not on behalf of any client or other party, but pursuant to our ethical obligations to report professional wrongdoing. SCR 20:8.3(a). Through the course of our representation of our clients, and as lawyers who followed these matters closely, we came to know that Gableman repeatedly violated the Rules, as well as to question his honesty, trustworthiness, and fitness to be a Wisconsin attorney. Law Forward is a nonpartisan organization which exists to protect and strengthen democracy in Wisconsin. While Law Forward has a viewpoint and a set of values, it is not a watchdog for attorney ethics. The egregiousness of Gableman's conduct, however, led us to submit this memorandum. While we frequently disagree with our opposing counsel, sometimes fundamentally, Gableman stands out for his complete disregard of the Rules and his oath as a Wisconsin attorney. This memorandum is intended to describe our knowledge regarding Gableman's conduct.

First, we provide a list of the relevant actors, as well as background information about Gableman's investigation. Next, the bulk of this memorandum describes his many violations of Wisconsin Supreme Court Rules. This section begins with a discussion of Gableman's failure to exhibit basic competence as a lawyer throughout his dealings with us and our clients and in various aspects of his "investigation." His and his team's incompetence underlay and compounded their other ethical violations. In addition to incompetently practicing law, Gableman repeatedly failed in his duties of honesty and candor; used legal process to harass and maliciously injure his targets; failed to appropriately maintain an attorney-client relationship; flouted additional basic rules of legal practice; and violated multiple provisions of the Attorney's Oath. We respectfully submit that Gableman's repeated failures to abide by the Rules in conducting a taxpayer-funded boondoggle requires a response from the Office of Lawyer Regulation.

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KEY FIGURES

The Office of Special Counsel and its associates.

1. **Michael Gableman:** Subject of this complaint. Wisconsin attorney, former administrative law judge for the Department of Workforce Development, district attorney for Ashland County, and Burnett County Circuit Court judge. Former justice of the Wisconsin Supreme Court (2008–18). Worked as a political appointee in the Office of Personnel Management during the Trump Administration. Former Special Counsel to the Assembly charged with investigating the 2020 General Election. Following his termination as Special Counsel, employed by the Thomas More Society.

2. **Andrew Kloster:** New York attorney who worked for and was paid by the Office of Special Counsel. Worked with Gableman in the Trump administration. Accompanied Gableman to Arizona.

3. **Zak Niemierowicz:** Former intern with the Office of Special Counsel. Shared an email address with Gableman. In June 2022, Gableman designated Niemierowicz the Office's legal custodian for purposes of open records requests and responses. Presently employed at the Thomas More Society.

4. **Carol Matheis:** California attorney who worked for and was paid by the Office of Special Counsel. Worked with Gableman in the Trump administration. Accompanied Gableman to Arizona.

5. **Stuart Karge:** Illinois attorney who worked for and was paid by the Office of Special Counsel early in its investigation.

6. **Kevin Scott:** Wisconsin attorney who worked for and was paid by the Office of Special Counsel, and initially represented Gableman in *Gableman v. Genrich*.

7. **Ron Heuer:** Wisconsin non-attorney election-conspiracy theorist, who performed some work for the Office of Special Counsel. Mr. Heuer is the president of the Wisconsin Voters Alliance, and was a plaintiff in *Wisconsin Voters Alliance v. Pence* and a petitioner in *Wisconsin Voters Alliance v. Wisconsin Elections Commission*, an original action that sought to overturn the results of the 2020 General Election.

8. **Edward Chaim:** Former investigator for the Office of Special Counsel.

9. **Thomas Obregon:** Former investigator for the Office of Special Counsel.

10. **Clinton (Clint) Lancaster:** Arkansas attorney who worked for and was paid by the Office of Special Counsel.

11. **Jay Stone:** Wisconsin-based election-conspiracy theorist who briefly worked for the Office of Special Counsel; not an attorney. Mr. Stone filed extensive complaints with the Wisconsin Elections Commission following the 2020 General Election.

Figures Associated with Gableman's Office of Special Counsel.

1. **Harry Wait:** Wisconsin non-attorney election-conspiracy theorist who communicated with Gableman about the Office of Special Counsel. Leader of Racine's

“HOT Government” which promotes false claims regarding the presidential 2020 election. Mr. Wait is currently being prosecuted for election fraud and misappropriating identifying information.

2. **Erick Kaardal:** Minnesota-based attorney, also licensed in Wisconsin, who worked closely with Gableman in an unclear capacity. Frequently acts as Special Counsel for the Thomas More Society, and has represented the Wisconsin Voter Alliance in litigation. Kaardal also appeared before the Assembly Committee on Campaigns and Elections periodically in 2021 and 2022 and presented inaccurate legal theories about elections. He appeared on videos Gableman presented on March 1, 2022, interrogating elderly voters.

3. **Thomas More Society:** Michigan-based conservative nonprofit that sublet office space from the Office of Special Counsel.

Litigation figures.

1. **James Bopp:** Indiana attorney, principal of Bopp Law Firm. Hired to assist Gableman with litigation arising from Gableman’s work as Special Counsel, including the Office of Special Counsel’s violation of Wisconsin’s open records law, and *Gableman v. Genrich*—Gableman’s attempt to jail public officials.

2. **Michael D. Dean:** Wisconsin attorney. Represented the Office of Special Counsel in *American Oversight v. Office of Special Counsel* and *Wisconsin Elections Commission v. Wisconsin Assembly*.

3. **Hon. Frank J. Remington:** Dane County Circuit Court judge. Presided over *American Oversight v. Office of Special Counsel*.

4. **Hon. Rhonda Lanford:** Dane County Circuit Court judge. Presided over *Wisconsin Elections Commission v. Wisconsin Assembly*.

5. **Hon. Valerie Bailey-Rihn (ret.):** Former Dane County Circuit Court judge. Presided over *American Oversight v. Vos*.

6. **Hon. Ralph M. Ramirez:** Waukesha County Circuit Court judge. Presided over *Gableman v. Genrich*.

7. **Jeffrey A. Mandell:** Wisconsin attorney employed by Stafford Rosenbaum; founder and Board President of Law Forward, a nonpartisan, nonprofit, pro-democracy law firm. Represented parties adverse to the Office of Special Counsel. Signatory to this complaint.

8. **Daniel S. Lenz:** Staff counsel at Law Forward. Represented parties adverse to the Office of Special Counsel. Signatory to this complaint.

9. **Mel Barnes:** Previously staff counsel at Law Forward. Represented parties adverse to the Office of Special Counsel.

10. **Dax Goldstein:** Senior counsel at States United Democracy Center. Represented parties adverse to the Office of Special Counsel.

11. **Christine Sun:** Legal director at States United Democracy Center. Represented parties adverse to the Office of Special Counsel.

Legislative figures.

1. **Robin Vos:** Speaker of the Wisconsin Assembly. Hired and later fired Gableman as Special Counsel.

2. **Janel Brandtjen:** Member of the Wisconsin Assembly, representing the 22nd Assembly district. Former chair of the Assembly Committee on Campaigns and Elections.

Individuals and entities Gableman targeted.

12. **Eric Genrich:** Mayor of the City of Green Bay. Subject of unlawful subpoenas from the Assembly and litigation by the Office of Special Council. Client of Law Forward and Stafford Rosenbaum.

13. **Voces de la Frontera Action, Inc.:** Nonpartisan, nonprofit immigrants' and workers' rights organization. Recipient of subpoena from the Assembly. Client of Law Forward and Stafford Rosenbaum.

14. **Satya Rhodes-Conway:** Mayor of the City of Madison. Subject of unlawful subpoenas from the Assembly and litigation by the Office of Special Council.

15. **Meagan Wolfe:** Administrator of the Wisconsin Elections Commission. Target of public harassment by Gableman.

16. **Vanessa Chavez:** Former City Attorney for the City of Green Bay. Recipient of improper communications from the Office of Special Counsel.

17. **Celestine Jeffreys:** City Clerk for the City of Green Bay. Subject of unlawful subpoena from the Assembly. Named in litigation by the Office of Special Council.

18. **Maribeth Witzel-Behl:** City Clerk for the City of Madison. Subject of unlawful subpoenas from the Assembly. Named in litigation by the Office of Special Council.

19. **Ann Jacobs:** Commissioner, Wisconsin Elections Commission. Former chair of the Wisconsin Elections Commission. Subject of unlawful subpoena from the Assembly and litigation by the Office of Special Council.

20. **Sarah Linski:** A technical services employee of the Wisconsin Elections Commission. Subject of unlawful subpoena from the Assembly and litigation by the Office of Special Council.

21. **Trina Zanow:** Director of the Division of Enterprise Technology in the Wisconsin Department of Administration. Subject of unlawful subpoenas from the Assembly and litigation by the Office of Special Council.

22. **David Henke:** Chief Information Officer of the City of Milwaukee. Subject of unlawful subpoena from the Assembly and litigation by the Office of Special Council.

23. **Hannah Bubacz:** Employee of the City of Milwaukee. Subject of unlawful subpoenas from the Assembly and litigation by the Office of Special Council.

24. **Cory Mason:** Mayor of the City of Racine. Subject of litigation by the Office of Special Council.

BACKGROUND

I. The sham investigation begins.

Wisconsin's 2020 General Election was safe, secure, fair, and transparent. Every court and administrative agency to review the matter has affirmed that Wisconsin administered the 2020 General Election successfully and without any meaningful fraud.³

Nonetheless, Wisconsin State Assembly Resolution 15 directed the Assembly Committee on Campaigns and Elections (the "Committee") "to investigate the administration of elections in Wisconsin, focusing on elections conducted after January 1, 2019."⁴ The Committee thereafter authorized the Speaker of the Assembly, Robin Vos, to hire a special counsel to conduct its investigation.⁵ Speaker Vos, purportedly on behalf of the Wisconsin Assembly, entered into a Coordinating Attorney Independent Contractor Agreement with Consultare, LLC.⁶ Gableman is the president of Consultare.⁷ Documents recently released by the House Select January 6th Committee

³ See *supra* n.1; see also *Prujansky v. Wolfe*, WEC Case No. EL 21-29 (Dec. 8, 2021); *Werner v. Wolfe*, WEC Case No. EL 21-31 (Dec. 8, 2021); *Thomas v. Wolfe*, WEC Case No. EL 21-30 (Dec. 8, 2021); *Liu v. Wolfe*, WEC Case No. EL 21-33 (Dec. 8, 2021), *aff'd sub nom Liu v. Wis. Elections Comm'n*, Dane Cnty. Cir. Ct. Case No. 2022CV46 (Oral Decision, June 1, 2022); *Carlstedt v. Wolfe*, WEC Case No. EL 21-24 (Dec. 8, 2021); Leg. Audit Bureau, *Elections Administration*, Report 21-19 (Oct. 2021).

⁴ *Gableman v. Genrich*, Waukesha Cnty. Cir. Ct. Case No. 2021CV1710 (Dkt. 7, Ex. B to Genrich Pet. ("Ex. B Documents"), pp. 2–3 (Nov. 29, 2021) [App'x 000001–000002].

⁵ *Id.* pp. 4–5 [App'x 000003–000004].

⁶ *Id.* pp. 6–9 [App'x 000005–000008].

⁷ *Id.* p. 8 [App'x 000005].

make clear that the beginning of this unfortunate process coincided with conversations Speaker Vos was having with former President Donald J. Trump.⁸

By the time of his selection, Gableman had already disqualified himself from this role by embracing anti-democratic conspiracy theories. As early as November 2020, he was spreading lies about the election, telling a crowd: “Our elected leaders—your elected leaders—have allowed unelected bureaucrats at the Wisconsin Elections Commission to steal our vote[.]” Gableman specifically blamed legislative leadership, which included Speaker Vos:

“The people who bear the real responsibility for all of this is the legislative leadership,” Gableman said in November. “They created the Wisconsin Elections Commission, they pay for it, they write the checks—well, the people pay for it, but the Legislature writes the check to support all these people (at the commission).”⁹

Gableman’s position was not only out of step with reality, but it was also inconsistent with the conclusions reached by other Republican partisan actors.¹⁰

⁸ U.S. House of Representatives, Select Comm. to Investigate the Jan. 6th Attack on the U.S. Capitol (Deposition of Robin Vos, 17:9–21 (Nov. 30, 2022)) [App’x 000023–000025].

⁹ Gableman would later dissemble about whether he made such statements. Patrick Marley, *Michael Gableman said bureaucrats ‘stole our votes’ before he was put in charge of reviewing 2020 election*, Milwaukee Journal Sentinel (Aug. 9, 2021), <https://www.jsonline.com/story/news/politics/2021/08/09/michael-gableman-said-election-stolen-before-put-charge-wisconsin-review/5518815001/>. Not only was Gableman’s conclusion false—the election was in no way stolen—but his premise betrays Gableman’s profound lack of knowledge as to how government and elections actually work in Wisconsin. While the Legislature maintains certain operating funds, the Department of Administration handles the State’s finances. Wis. Stat. ch. 16, subch. III.

¹⁰ See, e.g., Jordan Williams, *Paul Ryan says it’s ‘really clear’ Biden won election: ‘It was not rigged. It was not stolen’*, The Hill (Aug. 31, 2021), <https://thehill.com/homenews/campaign/570183-paul-ryan-says-its-really-clear-biden-won-election-it-was-not-rigged-it-was/>; Wisconsin Institute for Law and Liberty, *WILL Issues Review of 2020 Election, Recommendations for Reform* (Dec. 2021), <https://will-law.org/will-issues-review-of-2020-election-recommendations-for-reform/> (“A close review, including a hand count of roughly 20,000 ballots

Gableman spent July and August of 2021 doing very little. He would later aver that he spent those months (while taxpayers paid him \$11,000/month) at the New Berlin Public Library, “analyzing the issues to be investigated and how I would conduct the investigation.”¹¹ But if Gableman did any research, he kept no record of it.¹² Instead, he spent two of those weeks traveling to the MyPillow symposium and Arizona at taxpayer expense.^{13,14} He spent all of July either on vacation or “trying to find

from 20 wards, uncovered no evidence of fraudulent ballots or widespread voter fraud.”); Reid J. Epstein, *Fringe Scheme to Reverse 2020 Election Splits Wisconsin G.O.P.*, NY Times (Feb. 19, 2022), [nytimes.com/2022/02/19/us/politics/wisconsin-election-decertification.html](https://www.nytimes.com/2022/02/19/us/politics/wisconsin-election-decertification.html) (quoting Sen. Kathy Bernier saying, ““I have no explanation as to why legislators want to pursue voter-fraud conspiracy theories that have not been proven ... They should not do that. It’s dangerous to our democratic republic.”); Molly Beck, *Republican state elections commissioner Dean Knudson abruptly resigns, rebuking his party’s embrace of Trump’s false election claims*, Milwaukee Journal Sentinel (May 25, 2022), <https://www.jsonline.com/story/news/2022/05/25/wisconsin-republican-elections-commissioner-abruptly-rsigns/9933427002/> (quoting Dean Knudson’s resignation speech: “In this case, the painful truth is that President Trump lost the election in 2020 — lost the election in Wisconsin in 2020. And the loss was not due to election fraud.”).

¹¹ *American Oversight v. Vos*, Dane Cnty. Cir. Ct. Case No. 2022CV2440 (Affidavit of Michael J. Gableman (“Gableman Aff.”), ¶3 (June 22, 2022)) *appeal docketed*, No. 2022AP1532 (Wis. Ct. App. Sept. 8, 2022) [App’x 000026].

¹² *American Oversight v. Vos*, Dane Cnty. Cir. Ct. Case No. 2022CV2440 (Hearing Tr. 22:6–11 “June 23 Hrg. Tr.” (June 23, 2022)) [App’x 000036].

¹³ *Id.* 30:21–25, 41:17–42:13 [App’x 000039, 000041]. By the time Gableman attended the MyPillow symposium, the conspiracy theory that there had been some attack on election infrastructure by China had been widely and publicly debunked. Casey Tolan, Curt Devine, and Drew Griffin, *MyPillow magnate Mike Lindell’s latest election conspiracy theory is his most bizarre yet*, CNN (Aug. 5, 2021), <https://www.cnn.com/2021/08/05/politics/mike-lindell-mypillow-ceo-election-claims-invs>.

¹⁴ Patrick Marley and Natalie Eilbert, *Former Supreme Court Justice Gableman, head of Republican review of Wisconsin election, says he does not understand how elections work*, Milwaukee Journal Sentinel (Oct. 6, 2021), <https://www.jsonline.com/story/news/politics/2021/10/06/republican-reviewing-2020-vote-says-he-doesnt-know-how-elections-work/6020978001/> (reporting that Gableman traveled to Arizona to meet with officials conducting a partisan review and attended a South Dakota forum hosted “by MyPillow executive Mike Lindell, who has baselessly claimed China hacked the election.”); Patrick Marley, *Taxpayers bankrolled*

office space.”¹⁵ Even according to Gableman, whatever “research” he performed during this 60-day period resulted in “no substantive work.”¹⁶

In September 2021, the Wisconsin Assembly, by Speaker Vos and Chief Clerk Edward A. Blazel, began issuing subpoenas purporting to require the delivery of documents and the appearance of various state and municipal officials to testify in closed-door, recorded, quasi-deposition proceedings before Gableman at a private office in Brookfield. The respondents named in these unlawful subpoenas included our

Michael Gableman’s Arizona trip after Vos said they wouldn’t have to cover those costs, Milwaukee Journal Sentinel (Nov. 30, 2021), <https://www.jsonline.com/story/news/politics/2021/11/30/wisconsin-election-review-taxpayers-bankrolled-gableman-arizona-trip/8797452002/> (“State records show Wisconsin taxpayers spent more than \$2,700 to send officials to Arizona and South Dakota as part of a review of the election even though Assembly Speaker Robin Vos said the public would not have to cover those costs.”). The Arizona review was conducted in large part by a company called Cyber Ninjas, which was widely criticized for its work and eventually closed after being held in contempt for failing to turn over public records. Michael Wines, *Cyber Ninjas, Derided for Arizona Vote Review, Says It Is Shutting Down*, NY Times (Jan. 7, 2022), <https://www.nytimes.com/2022/01/07/us/cyber-ninjas-arizona-vote-review.html>. Speaker Vos first said he would try to recoup the money Gableman spent going to Arizona and South Dakota, but later reversed that promise. Patrick Marley, *Michael Gableman to receive \$5,500 a month even as work on Wisconsin’s Republican-led election review is paused*, Milwaukee Journal Sentinel (May 11, 2022), <https://www.jsonline.com/story/news/politics/elections/2022/05/11/gableman-get-5-500-month-wisconsin-election-review-pauses/9704709002/>.

¹⁵ June 23, 2022 Hrg. Tr. 59:2–5 [App’x 000044] (“I had a previously planned vacation the first week of July, family vacation; and then for the remainder of July, I’m trying to find office space.”). As the Court noted immediately after this testimony, even this could not be true, as Gableman had secured office space in mid-July. *Id.* 59:6–10. Gableman testified he was diagnosed with COVID-19 on August 13 and spent two weeks in bed. Of course, falling ill alone should not be considered a violation of the Rule, although it may compel withdrawal under certain circumstances. SCR 20:1.16(a)(2). Rather, this timeline makes clear that Gableman did almost nothing to make himself competent in election law or any other substantive area of law relevant to an actual investigation.

¹⁶ Gableman Aff., ¶7 [App’x 000027].

former client, Eric Genrich, Mayor of the City of Green Bay.¹⁷ As described in detail in Section II.A., *infra*, we contacted Gableman’s subordinate attorney, who agreed that no testimony would be required from Mayor Genrich. Gableman later broke that agreement without any notice to Mayor Genrich or his counsel. Other respondents were treated similarly.

Almost immediately after the Assembly issued its first set of subpoenas, Gableman publicly dismissed the idea that any city officials would be required to testify.¹⁸ On October 14, 2021, Gableman released a YouTube video entitled “Wisconsin Special Counsel explains subpoena process.”¹⁹ He said: “In order to facilitate faster responses and address concerns that the terms of those subpoenas were too burdensome, we offered the customary opportunity to proceed informally....” He also referred to an “understanding that additional information would be provided on a mutually agreeable timeline” so long as officials were willing to work with his office and referenced potential future efforts to enforce subpoenas if necessary. On October

¹⁷ *Gableman v. Genrich*, Waukesha Cnty. Cir. Ct. Case No. 2021CV1710 (Dkt. 6, Ex. A to Genrich Pet., (“Ex. A Documents”) pp. 2–8 (Nov. 29, 2021)) [App’x 000045–000051].

¹⁸ Emilee Fannon, *Gableman Puts Elections Subpoenas on Hold, Cancels Interviews with Clerks and Mayors*, WDJT-Milwaukee (Oct. 7, 2021), <https://www.cbs58.com/news/gableman-puts-election-subpoenas-on-hold-cancels-interviews-with-clerks-and-mayors>; A.J. Bayatpour, *Gableman Backs Off Request For Testimony From City Officials*, wkow.com (Oct. 7, 2021) https://www.wkow.com/news/gableman-backs-off-request-for-testimony-from-city-officials/article_e249c854-27ba-11ec-82c5-7b5f2c67ef13.html.

¹⁹ Wisconsin Office of Special Counsel, *Wisconsin Special Counsel explains subpoena process* (Oct. 14, 2021), <https://www.youtube.com/watch?v=AD9G9Aq2a0I&t=4s>.

15, 2021, Gableman agreed that, in light of extensive document productions, the subpoenas had been complied with.²⁰ He indicated that any testimony would be scheduled after his office finished its review of the documents produced. Toward the end of October, the Wisconsin Elections Commission and its Administrator filed suit, challenging the validity of the subpoenas and particularly the quasi-deposition procedure.²¹

On December 28, 2021, the Assembly (again by Speaker Vos and Chief Clerk Blazel), issued another series of subpoenas, including additional subpoenas directed to the Wisconsin Elections Commission and officials in the cities of Milwaukee, Madison, Green Bay, Kenosha, and Racine, as well as subpoenas directed to Dominion Voting Systems and Electronic Systems & Software.²² This batch also included a subpoena to our client Voces de la Frontera Action, Inc., a nonpartisan, nonprofit organization that educates and advocates on behalf of the rights of immigrants and low-

²⁰ Matt Smith, *GOP Election Attorney Signals Eventual Testimony, Possible Subpoenas For Voting Machines*, WISN 12 (Oct. 15, 2021), <https://www.wisn.com/article/gableman-signals-eventual-testimony-possible-subpoenas-for-election-machines-in-12-news-interview/37973875>.

²¹ *Wisconsin Elections Comm'n. v. Wis. Assembly*, Dane Cnty. Cir. Ct. Case No. 2021CV2552 (filed Oct. 21, 2021).

²² Molly Beck and Patrick Marley, *Gableman subpoenas voting machine companies in 2020 review*, Milwaukee Journal Sentinel (Jan. 14, 2022), <https://www.jsonline.com/story/news/politics/elections/2022/01/14/gableman-subpoenas-voting-machine-companies-2020-review/6532817001/>.

income workers.²³ Like many others, the subpoena directed to Voces was astoundingly broad, with requests including: (1) “Any and all communications” related to the 2020 General Election or any future elections; (2) internal communications in the organization; (3) financial information, including donor information; and (4) personal information about Wisconsin voters and citizens.²⁴ Not surprisingly, Voces determined that the subpoena threatened their First Amendment rights²⁵ and was unlawful in other ways, and therefore intervened as a plaintiff in *Wisconsin Elections Commission v. Wisconsin Assembly*.²⁶ On February 15, 2022, Gableman’s office “withdrew” the Voces subpoena and stated he would take no action to compel or enforce it, nor would he issue any further subpoenas to Voces or related individuals. The Assembly and Speaker Vos, along with other parties, agreed with and adopted Gableman’s position.²⁷

²³ *Wisconsin Elections Comm’n. v. Wis. Assembly*, Dane Cnty. Cir. Ct. Case No. 2021CV2552 (Affidavit of Jacqueline Boynton, ¶¶2-3, 6 (Jan. 9, 2022)) [App’x 000052–000053].

²⁴ *Id.*, ¶6, Ex. A [App’x 000054–000062].

²⁵ Gableman is well acquainted with the threat that overbroad government action can pose to protected political activity. *State ex rel. Two Unnamed Petitioners v. Peterson*, 2015 WI 85, ¶47, 363 Wis. 2d 1, 866 N.W.2d 165 (Gableman, J. writing for the majority: “Political speech is thus a fundamental right and is afforded the highest level of protection. Indeed, freedom of speech, especially political speech, is the right most fundamental to our democracy.”).

²⁶ *Wisconsin Elections Comm’n. v. Wis. Assembly*, Dane Cnty. Cir. Ct. Case No. 2021CV2552 (Dkt. 95, Order (Feb. 4, 2022)) [App’x 000063–000064].

²⁷ *Wisconsin Elections Comm’n. v. Wis. Assembly*, Dane Cnty. Cir. Ct. Case No. 2021CV2552 (Dkt. 122, Stip. for Partial Dism. (Mar. 15, 2022)) [App’x 000065–000068].

II. Gableman appears before and issues reports to the Committee.

Between October 1, 2021, and August 2022, Gableman appeared three times before the Committee. Gableman issued his First Interim Report and testified at length before the Committee on November 10, 2021.²⁸ Neither that testimony nor the Interim Report referenced imminent testimony of any official.²⁹

Gableman appeared before the Committee again on December 1, 2021, and revealed for the first time that he had initiated some sort of proceedings³⁰ against Mayor Genrich and Madison Mayor Satya Rhodes-Conway.³¹ Gableman falsely claimed: “Of all the clerks and of 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 city’s election in November 2020.”³² While Gableman was not clear in his testimony,

²⁸ *Gableman v. Genrich*, Waukesha Cnty. Cir. Ct. Case No. 2021CV1710 (Dkt. 56, Mandell Aff. (“Mandell Aff.”), ¶13 (Jan. 4, 2022)) [App’x 000071].

²⁹ *Id.*

³⁰ Although not initially filed as such, this case would eventually be captioned as *Michael J. Gableman vs. Eric Genrich*, Waukesha Cnty. Cir. Ct. Case No. 2021CV1710 (filed Nov. 29, 2021).

³¹ *Hearing*, Assembly Committee on Campaigns and Elections (Dec. 1, 2021), <https://wiseye.org/2021/12/01/assembly-committee-on-campaigns-and-elections-22/>.

³² Will Kenneally, *Gableman heads to court over Madison and Green Bay subpoenas*, PBS Wisconsin (Dec. 2, 2021), <https://pbswisconsin.org/news-item/gableman-heads-to-court-over-madison-and-green-bay-subpoenas/>. Gableman’s implication that anyone other than city employees ran the election in the Cities of Green Bay or Madison is false. As described in former City of Green Bay City Attorney Vanessa Chavez’s exhaustive post-election report, <https://greenbaywi.gov/DocumentCenter/View/6657/Report-of-2020-Election-Season-PDF?bidId=>, the City of Green Bay ran a successful election thanks to the efforts of city staff, poll workers, and volunteers. There is also no evidence that anyone other than City of Madison staff and election inspectors planned and conducted the November 2020 General Election.

it later became apparent that the nature of the proceeding was a request for a “writ” to jail both mayors.³³

Gableman appeared before the Committee once more on March 2, 2022, to present his “Second Interim Investigative Report.”³⁴ Gableman testified for approximately three-and-a-half hours, during which time he called for the Legislature to “decertify” the 2020 election results, which is not legally possible.³⁵ Though this report, like its predecessor, was titled as “interim,” it was Gableman’s last.

III. Gableman’s contracts with and relationship to the Assembly.

Gableman’s agreements with Speaker Vos establishing his role, his relationship to the Assembly, and his purported authority to pursue his investigation are confusing and discontinuous.³⁶ It appears that Gableman initially acted under a “Coordinating Attorney Independent Contractor Agreement,” signed by Gableman and Speaker Vos, with a term expiring on October 31, 2021.³⁷ While Gableman and

³³ *Gableman v. Genrich*, Waukesha Cnty. Cir. Ct. Case No. 2021CV170 (Dkt. Nos. 1, 5, Petitions (Nov. 29, 2021)) [App’x 000098–000101]; Wis. Stat. § 885.12.

³⁴ Office of the Special Counsel, *Second Interim Investigative Report on the Apparatus & Procedures of the Wisconsin Elections System* (March 1, 2022), <https://legis.wisconsin.gov/assembly/22/brandtjen/media/1552/osc-second-interim-report.pdf>.

³⁵ Shawn Johnson, *Gableman report calls for decertifying 2020 election. The Legislature’s nonpartisan lawyers say that’s not possible*, WPR (Mar. 1, 2022), <https://www.wpr.org/gableman-report-calls-decertifying-2020-election-legislatures-nonpartisan-lawyers-say-thats-not>; Katie Bender-Olson & Peggy Hurley, *Legislative Authority to Decertify a Presidential Election*, Wis. Legislative Council (Nov. 1, 2021), <https://www.documentcloud.org/documents/21187708-decertify-president-paper>.

³⁶ Exhibit B Documents, pp. 2-17 (documents cited by Gableman without explanation in support of his authority) [App’x 000001–000016].

³⁷ *Id.*, pp. 6–9 [App’x 000005–000008].

Speaker Vos contemplated an initial amendment (“First Amendment”) to extend that agreement, on March 2, 2022, a Dane County Circuit Court later found that this amendment was not effectively executed.³⁸ So Gableman’s contract expired no later than October 31, 2021, approximately one month *before* he, purporting to stand in the place of the Assembly, filed his petitions against Mayors Genrich and Rhodes-Conway.³⁹

On March 8, the parties executed a “Second Amendment to Agreement” (“Second Amendment”).⁴⁰ The Second Amendment contained no effective date but expired on April 30, 2022. None of these agreements—not the initial contract, the First Amendment, or the Second Amendment—authorized Gableman to appear in, much less initiate, litigation. The Committee adopted “Motion 1” on January 19, 2022, purportedly to authorize Gableman to take testimony, but it also did not authorize litigation.⁴¹

³⁸ *American Oversight v. Office of Special Counsel*, Dane Cnty. Cir. Ct. Case No. 2021CV3007 (Dkt. 165, Decision & Order, pp. 19–21 (Mar. 2, 2022)), *appeal docketed*, Nos. 2022AP636, 2022 AP1030, 2022AP1290, 2022AP1423 [App’x 000102–000105].

³⁹ Ex. B Documents, p. 6 [App’x 000005]; *Gableman v. Genrich*, Waukesha Cnty. Cir. Ct. Case No. 2021CV170, (Dkt. 1, 5, Petitions) [App’x 000098–000101].

⁴⁰ *American Oversight v. Office of Special Counsel*, Dane Cnty. Cir. Ct. Case No. 2021CV3007 (Dkt. 176, Second Amendment to Agmt. (Mar. 8, 2022)) [App’x 000106–000109].

⁴¹ Assembly Committee on Campaigns and Elections, *Motion 1* <https://legis.wisconsin.gov/assembly/22/brandtjen/media/1544/motion.pdf>. The Committee was without legal authority to do this, as the statute permits the Legislature to compel the testimony of witnesses only “before any committee of the legislature, or of either house thereof...” Wis. Stat. § 13.31. The Committee made no attempt to explain why Wis. Stat. § 13.31 would not apply, nor what would permit Gableman to interview witnesses in “closed session.” *Cf.* Wis. Stat. § 19.83 (1).

Gableman and Speaker Vos executed another contract⁴² on May 1, 2022.⁴³ By its terms, the May 1 contract became the sole agreement between those parties and superseded all prior contracts. The May 1 contract identified the Assembly as “Client,” and provided that Gableman would work as “lead counsel” and cooperate with outside counsel James Bopp of the Bopp Law Firm. Gableman was to be paid half of his previous salary.

IV. Termination.

On August 12, 2022, Speaker Vos announced that he had terminated the agreement between the Assembly and Gableman.⁴⁴ Public reporting included a copy of a letter Speaker Vos sent Gableman, terminating Gableman’s contractual relationship with the Assembly.⁴⁵ Speaker Vos’s letter provided that Gableman is “not to engage in any further activities with regards to the Office of Special Counsel or as a representative of the Wisconsin State Assembly.” It also ended Gableman’s “employment by and association with the Wisconsin State Assembly.” After the letter, Gableman did not withdraw from any ongoing litigation.

⁴² *Agreement for Legal Services*, <https://www.documentcloud.org/documents/21986703-agreement-for-legal-services-with-consultare-51022>.

⁴³ Marley, *Michael Gableman to receive \$5,500 a month even as work on Wisconsin’s Republican-led election review is paused*, *supra* n.14.

⁴⁴ Robin Vos, *Speaker Vos on Closing the Office of Special Counsel* (Aug. 12, 2022), <https://legis.wisconsin.gov/assembly/63/Vos/media/news-updates-2019-to-2023/2022/2022-8-12-ending-gableman-contract/>.

⁴⁵ Robin Vos, *Letter* (Aug. 12, 2022) [App’x 000110].

DESCRIPTION OF VIOLATIONS OF SUPREME COURT RULES

I. Gableman lacked competency to undertake the engagement as Special Counsel in this matter.

Gableman’s sham investigation was marked, from beginning to end, by a profound lack of competency. In “all professional functions” a lawyer is expected to be competent. SCR 20 Preamble [4]. Unsurprisingly, this foundational requirement is the first substantive standard described in the Rules: “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” SCR 20:1.1. As described below, and as reflected in the public record of his work, Gableman never met this standard in his work as Special Counsel from 2021 to 2022. Speaker Vos hired Gableman, through Gableman’s limited liability company, to “[c]oordinate the day to day investigatory work relating to potential irregularities and/or illegalities connected to the 2020 November election in Wisconsin.”⁴⁶ When Gableman accepted this role he had, by his own admission, no understanding of how elections worked. In an interview with press he said, “Most people,

⁴⁶ The General Election occurred on November 3, 2020. President Joseph R. Biden won the presidential race in Wisconsin by over 20,000 votes. Wisconsin Elections Commission, *Statement of Canvass for President, Vice President and Presidential Electors—General Election, November 3, 2020* (Nov. 30, 2020), <https://elections.wi.gov/2020-presidential-recount>; Rosalind S. Helderman and Amy Gardner, *Wisconsin recount confirms Biden’s win over Trump, cementing the president’s failure to change the election results*, Washington Post (Nov. 29, 2020), https://www.washingtonpost.com/politics/wisconsin-recount-over/2020/11/29/b4896ade-30c9-11eb-96c2-aac3f162215d_story.html.

myself included, do not have a comprehensive understanding or even any understanding of how elections work.”⁴⁷ Gableman had none of the basic tools of an attorney, including a private computer, private office space, or access to legal databases; he worked, instead, on a shared computer terminal at the New Berlin Public Library.⁴⁸ He had done no prior work that would have prepared him for this role.⁴⁹

Of course, attorneys may, and often do, accept a representation that requires them to *become* competent if they lack the requisite knowledge at the outset. SCR 20:1.1, ABA Comment [2, 4]. But Gableman did no such thing. As described in Section I of the Background, above, Gableman did no substantive work in July and August. Instead, at taxpayer expense, he went thousands of miles out of his way to immerse himself in a mire of conspiracy theories. As Judge Bailey-Rihn stated, “I guess what we found out from this long and torturous road is that, at least for the first part of this investigation, there was no actual work being done”⁵⁰

Gableman also made no effort to get help. One basic way a Wisconsin attorney may get up to speed in an area of law is to work with attorneys experienced in that

⁴⁷ Marley and Eilbert, *Former Supreme Court Justice Gableman, head of Republican review of Wisconsin election, says he does not understand how elections work*, *supra* n.14.

⁴⁸ June 23, 2022 Hearing Tr. 24:25–25:20 [App’x 000037]. This creates its own ethical concern, as lawyers are required by the Rules to make reasonable efforts to safeguard confidential information by using secure computing systems. SCR 20:1.1; Ethics Opinion EF-15-01 (Amended, Sept. 8, 2017).

⁴⁹ June 23, 2022 Hearing Tr. 15:16–22 [App’x 000034].

⁵⁰ Molly Beck, *Taxpayers are on the hook for \$100,000 after a judge imposes costs in Gableman records case*, Milwaukee Journal Sentinel (July 28, 2022), <https://www.jsonline.com/story/news/politics/2022/07/28/taxpayers-hook-100-000-fees-over-michael-gableman-records-case-wisconsin-election-review/10174009002/>.

field. Instead, during this initial period, Gableman worked exclusively with out-of-state lawyers he knew personally and who accompanied him to Arizona: Andrew Kloster, Carol Matheis, and Stuart Karge.⁵¹ Even with these volunteer attorneys, Gableman apparently continued to act on his own conducting, at most, Internet research.⁵² Gableman would eventually hire another out-of-state lawyer, Clint Lancaster.⁵³ One Wisconsin lawyer, Kevin Scott, worked for Gableman's office for a time, but not until after this initial period.⁵⁴ Gableman also eventually hired outside firms to

⁵¹ June 23, 2022 Hearing Tr. 40:17–25 [App'x 000040]. Matheis is a California attorney. Patrick Marley, *The identity of Michael Gableman's 'Carol M.' is a mystery no longer, but the names of others helping him remain secret*, Milwaukee Journal Sentinel (Nov. 2, 2021), <https://www.jsonline.com/story/news/politics/2021/11/02/identity-michael-gablemans-carol-m-mystery-no-longer/6252935001/>. Kloster is a New York attorney who apparently served as an election observer on November 3, 2020 in the City of Green Bay and was identified as an attorney for the OSC on its website. Declaration of Andrew R. Kloster (Nov. 16, 2020) [App'x 000111–000118]; <https://www.wielectionreview.org/WIElectionReviewMission/Investigators>. Stuart Karge was an attorney for the Trump campaign. He does not appear to be a Wisconsin lawyer.

⁵² June 23, 2022 Hearing Tr. 16:7–12, 22:6–9 [App'x 000035–000036].

⁵³ Patrick Marley and Molly Beck, *Michael Gableman reveals one more staffer for his election review in testimony before lawmakers*, Milwaukee Journal Sentinel (Nov. 10, 2021), <https://www.jsonline.com/story/news/politics/2021/11/10/michael-gableman-reveals-another-staffers-name-election-review/6371829001/>.

⁵⁴ A.J. Bayatpour, *New Gableman expenses released; Vos argues outside legal fees don't count toward budget*, WKOW (June 1, 2022), https://www.wkow.com/townnews/law/new-gableman-expenses-released-vos-argues-outside-legal-fees-dont-count-toward-budget/article_2c814c58-e200-11ec-aa74-3f95c3435658.html.

represent him in litigation, again from outside of the state.⁵⁵ Similarly, the non-lawyers with whom Gableman consulted were generally out-of-state conspiracy theorists.⁵⁶

Unfortunately, and as described at length below, this lack of basic competence infected every aspect of Gableman's work. Despite a long career in the law, including service to the state as a Justice on the Wisconsin Supreme Court,⁵⁷ Gableman apparently either never learned, or chose to forget, the Rules applicable to attorneys and, potentially as a result, violated many of them, including:

⁵⁵ Rob Mentzer, *Judge revokes ex-Gableman attorneys' right to represent 2020 election inquiry*, WPR (Aug. 17, 2022), <https://www.wpr.org/judge-revokes-ex-gableman-attorneys-right-represent-2020-election-inquiry>.

⁵⁶ Patrick Marley, *Gableman talking to conspiracy theorist Shiva Ayyadurai as he reviews Wisconsin's election*, Milwaukee Journal Sentinel (Sept. 15, 2021), <https://www.jsonline.com/story/news/politics/2021/09/14/gableman-talking-shiva-ayyadurai-he-reviews-wisconsin-election/8330970002/>. In addition to Ayyadurai, who is based in Massachusetts, this article discusses Gableman's conversations with Randy Pullen, based in Arizona, and Arizona Senate President Karen Fann. The same article indicates Gableman was talking to at least one Wisconsin source—Harry Wait, currently being prosecuted for election fraud in Racine County. *State v. Wait*, Racine Cnty. Cir. Ct. Case No. 22-CF-1223 (filed Sept. 1, 2022). In the course of his “work,” Gableman continued to rely mostly on fringe conspiracy theorists, and no actual election experts. Patrick Marley, *In his taxpayer-paid election review, Michael Gableman calls meetings with conspiracy theorists and a convicted fraudster*, Milwaukee Journal Sentinel (Nov. 24, 2021), <https://www.jsonline.com/story/news/politics/2021/11/24/michael-gableman-met-conspiracy-theorists-gop-election-review/8733504002/>; A.J. Bayatpour, *Gableman investigator's group previously sued to void 2020 election results*, wkow.com (Nov. 30, 2021), https://www.wkow.com/townnews/law/gableman-investigators-group-previously-sued-to-void-2020-election-results/article_c2c1cacc-523a-11ec-b5c9-d7ddeeee4b3b.html.

⁵⁷ During his term as Justice on the Wisconsin Supreme Court, Gableman certainly had the opportunity to become acquainted with the Rules. He was party to substantial litigation under the portion of the Supreme Court Rules applicable to judges. *See In re Judicial Disciplinary Proceedings Against Gableman*, 2010 WI 61, ¶¶37, 46, 325 Wis. 2d 579, 784 N.W.2d 605; *see also Ozanne v. Fitzgerald*, 2012 WI 82, 822 N.W.2d 67 (mem.); *Adams v. State*, 2012 WI 81, 342 Wis. 2d 374, 822 N.W.2d 867 (mem.). Additionally, as part of its constitutional duty to “supervise the practice of law and protect the public from misconduct by persons practicing law in Wisconsin” the Court has original jurisdiction over attorney discipline and hears numerous disciplinary appeals each year. Wis. Const. art. VII, § 3; SCR 21 Preamble; SCR 22.

1. Rules regarding the expectation of honesty, truthfulness, and candor.
2. Rules against harassing and malicious behavior.
3. Rules governing the relationship between attorneys and their clients.
4. Rules requiring attorneys to follow and uphold their oath.

The rest of this memorandum expands on Gableman’s failures in each of these areas.

II. Gableman’s sham investigation was characterized throughout by a lack of honesty and truthfulness.

The system of justice in which lawyers participate is, at base, a search for truth. *Stivarius v. DiVall*, 121 Wis. 2d 145, 157, 358 N.W.2d 530 (1984) (“The administration of justice is, and should be, a search for the truth.”); *see also Sands v. Whitnall Sch. Dist.*, 2008 WI 89, ¶31, 312 Wis. 2d 1, 754 N.W.2d 439 (internal citations omitted) (protecting “the search for truth central to our adversary process.”). For that reason, the Rules demand honesty. SCR 20:3.3 (candor toward the tribunal); SCR 20:8.4(c) (misconduct to “engage in conduct involving dishonest, fraud, deceit or misrepresentation.”); SCR 20:4.1 (truthfulness of statements to others); SCR 20:3.4(e) (truthfulness at trial); *In re Disciplinary Proceedings Against Petersen*, 2017 WI 102, ¶39, 378 Wis. 2d 488, 904 N.W.2d 532 (per curiam) (attorneys’ “deception and lies” are a “betrayal of the [client’s] trust”)⁵⁸; *see also* Wis. Stat. §§ 802.05(2), (3). The Rules require attorneys to behave honestly even outside the litigation context and when they are not representing clients. *See In re Disciplinary Proceedings Against Kessler*, 2010 WI 120, ¶¶29–32, 329 Wis. 2d 559, 789 N.W.2d 744 (per curiam) (analyzing

⁵⁸ At the time of this decision, Gableman was a Justice on the Wisconsin Supreme Court.

attorney's statements made in relation to his spouse's judicial campaign under SCR 20:8.4(c); *In re Disciplinary Proceedings against Hupy*, 2011 WI 38, ¶117, 333 Wis. 2d 612, 799 N.W.2d 732 (per curiam) (finding violations of SCR 20:8.4(c) in attorney's advertising materials containing false statements about competitor).⁵⁹ And attorney dishonesty can violate the Rules even if it does not actually defraud anyone. *Kessler*, 2010 WI 120 ¶27.

Gableman's conduct during his sham investigation managed to include dishonesty directed toward opposing counsel and parties, the Circuit Court of Waukesha County, his own client, and the public.⁶⁰

A. *The Gableman team acted dishonestly toward opposing parties and their counsel.*

Gableman and the staff and attorneys he supervised violated the Rules governing candor and conduct toward opposing parties by making material misrepresentations about whether, and how, he would enforce legislative subpoenas; using secretive email addresses to obscure their identities; and repeatedly contacting parties he knew were represented by counsel.

⁵⁹ At the time of these decisions, Gableman was a Justice on the Wisconsin Supreme Court.

⁶⁰ This list encompasses Gableman's activities as a lawyer. In the course of his time at the Office of Special Counsel, Gableman was also involved, as a litigant and a witness, in litigation in the Circuit Court of Dane County, two districts of the Wisconsin Court of Appeals, and the Supreme Court of Wisconsin. His testimony and legal papers filed on his behalf in those venues may also have included dishonesty. We were not counsel to any party in those proceedings.

1. *Gableman’s team misled opposing counsel about their intentions regarding subpoenas.*

“A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials.” SCR 20 Preamble [5]. To that end, the Rules oblige a lawyer not to knowingly: “(1) make a false statement of a material fact or law to a 3rd person[.]” SCR 20:4.1(a)(1). “Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements.” SCR 20:4.1 ABA Comment [1].

Gableman and his out-of-state subordinate attorneys made repeated misrepresentations to other parties about the status of various legislative subpoenas, which those parties relied on. This began even before any subpoenas were served on Green Bay, when Gableman falsely asserted at a public meeting of the City Council that subpoenas had been served on Mayor Genrich and City Clerk Celestine Jeffreys; when Mayor Genrich disputed that, Gableman responded that they would be served the next day.⁶¹

Shortly after the subpoenas issued, Jeffrey A. Mandell, an attorney with Stafford Rosenbaum LLP, on behalf of the City of Green Bay, spoke by phone with Andrew Kloster, an attorney working under Gableman’s supervision. Mandell and Kloster agreed that the City of Green Bay would voluntarily produce to Gableman all documents that had been produced in response to open-records requests regarding the November 2020 General Election, as well as additional public documents regarding

⁶¹ *Gableman v. Genrich*, Waukesha Cnty. Cir. Ct. Case No. 2021CV170 (Dkt. 57, Chavez Aff. (“Chavez Aff.”), ¶5 (Jan. 4, 2022)) [App’x 000120].

the City’s administration of that election. In exchange, they agreed that none of the legislative subpoenas directed to the City of Green Bay or its officials would be enforced. This agreement expressly included an understanding that no one from Green Bay would provide testimony until Gableman and his team had reviewed the voluminous documents produced and identified specific topics on which further inquiry was necessary. Counsel for the City memorialized the agreement in writing, without objection or clarification from Gableman’s office, and the City fulfilled its end of the bargain.⁶² Gableman did not, and without communicating further with the City of Green Bay via its appointed counsel, filed a “Petition for Writ of Attachment of the Person”⁶³ and sought enforcement of a legally baseless subpoena that he had agreed to consider satisfied. Gableman doubled down by not serving Mayor Genrich or his counsel with a copy of the petition and instead publicly announcing the existence of the proceedings in tendentious and misleading public testimony before the Committee.

⁶² Mandell Aff. ¶¶12–17 [App’x 000071–000072]; *Gableman v. Genrich*, Waukesha Cnty. Cir. Ct. Case No. 2021CV170 (Dkt. 56, Lenz Aff. (“Lenz Aff.”), ¶¶4–5 (Jan. 4, 2022)) [App’x 000124].

⁶³ This is not a permissible pleading in Wisconsin. Wis. Stat. § 802.01 (1). Since the Petition requests an order in the form of a “Writ of Attachment,” it could best be construed as a motion. Wis. Stat. § 802.01 (2). A “writ of attachment” has nothing to do with obtaining testimony and does not authorize the relief Gableman sought. *See* Wis. Stat. ch. 811. Writs of attachment are relevant in civil disputes between private parties for money damages, and they cannot be issued until after a summons and complaint have been filed, nor can they be used against a municipality (or a municipal officer in his official capacity). *See* Wis. Stat. §§ 811.01, 811.02. The bases Gableman cited were Wis. Stat. § 13.31, which authorizes the Legislature to issue subpoenas, and Wis. Stat. § 885.12, which authorizes courts, in certain circumstances that were not present here, to order the sheriff to jail recalcitrant witnesses. This all underscores how little inquiry Gableman apparently did prior to filing such a frivolous proceeding.

Even the method Gableman used to file the petitions evaded review by the respondents or their attorneys. The petitions were not filed as normal civil filings, nor did they initially appear on the Wisconsin Circuit Court Access Program. Although Gableman knew we represented the City of Green Bay, we nonetheless had to obtain copies of the pleadings through journalists.⁶⁴ Only after we submitted a letter to the court outlining some of the fundamental flaws of Gableman’s petition did that petition appear on the public docket. Gableman never served us or our client. This type of attempted *ex parte* communication with the Court without serving the other parties independently violates SCR 20:3.5(b). *In re Disciplinary Proceedings Against Hudec*, 2014 WI 46, ¶16, 354 Wis. 2d 728, 848 N.W.2d 287 (per curiam).⁶⁵

The specifics of Gableman’s perfidy are explained at greater length in Respondent Eric Genrich’s Motion for Sanctions and accompanying brief and affidavits, filed January 4, 2022.⁶⁶ The details are also discussed in the joint brief various municipal respondents filed in the same case several months later, which also describes how Gableman’s office misled other municipal officials and their attorneys, particularly but not only those from the City of Madison.⁶⁷

⁶⁴ *Gableman v. Genrich*, Waukesha Cnty. Cir. Ct. Case No. 2021CV170 (Dkt. 13, Letter to Ct. (Dec. 2, 2021)) [App’x 000129–000135].

⁶⁵ At the time of this decision, Gableman was a Justice on the Wisconsin Supreme Court.

⁶⁶ *Gableman v. Genrich*, Waukesha Cnty. Cir. Ct. Case No. 2021CV170 (Dkt. Nos. 50, Not. of Mtn. and Mtn. for Sanctions; 55, Brief (Jan. 4, 2022)) [App’x 000136–000168]. The specifics of Gableman’s misconduct are described on pages 5–11 and 14–28 of the Brief. [App’x 000142–000148, 000151–000165]. The court dismissed the case before ruling on this motion.

⁶⁷ *Gableman v. Genrich*, Waukesha Cnty. Cir. Ct. Case No. 2021CV170 (Dkt. 133, Municipal Resp’s Br. in Response, pp. 4–22 (June 6, 2022)) [App’x 000182–000200].

If Gableman never intended to waive enforcement of the subpoenas for some or all of these officials—as his later actions suggest—he affirmatively misled counsel for the City of Green Bay and the City of Madison, and our respective clients, in violation of the Rules. See *In re Disciplinary Proceedings Against Atta*, 2016 WI 69, 371 Wis. 2d 299, 882 N.W.2d 810 (per curiam) (misconduct to mislead opposing counsel by falsely denying facts).⁶⁸ As the supervising attorney, Gableman was responsible for the misconduct of Kloster,⁶⁹ his subordinate attorney, in agreeing to waive enforcement. SCR 20:5.3(c)(2). He also ratified this misrepresentation by not correcting it, despite receiving written confirmation of the agreement between his office and counsel for the City of Green Bay.⁷⁰ Gableman also made misrepresentations to the press, stating that the subpoenas had been complied with and that any other requests for testimony would be worked out among the parties. When the subjects of the subpoenas reasonably relied on these public statements, which aligned with the agreements reached by Gableman’s office and counsel for the subjects of the subpoenas, Gableman responded by starting damaging litigation based on mistruths he repeated in public testimony before the Committee.

On the other hand, if Gableman intended to abide by his agreement at the time, only to break it later, then he lied to the Circuit Court for Waukesha County, the Committee, and the public when he said, in public and before the Circuit Court

⁶⁸ At the time of this decision, Gableman was a Justice on the Wisconsin Supreme Court.

⁶⁹ For more discussion of Gableman’s failure to supervise Kloster, see Section V.A, *infra*.

⁷⁰ Mandell Aff., ¶8, Ex. C [App’x 000096–000097]. For further discussion of Gableman’s failure to properly supervise, see Section V.A, *infra*.

of Waukesha County, that the officials had “failed” to appear for quasi-depositions that neither he nor the Legislature could require under the law.

2. *Gableman’s team obscured their roles and identities by using misleading email addresses.*

In addition to the general obligation to tell the truth set out in SCR 20:4.1(a)(1) and 20:8.4(c), the Rules impose a specific obligation on lawyers to be forthright about who they are. SCR 20:7.1 (“A lawyer shall not make a false or misleading communication about the lawyer or the lawyer’s services.”). SCR 20:7.1 expressly prohibits material omissions of fact. *Id.*, (a).

Gableman, however, took steps to obscure, rather than reveal, what he was doing, particularly by using anonymized email addresses for his office. Early in the sham investigation, Gableman emailed county clerks from a “john delta” Gmail account but signed the body of the email. Not surprisingly, in many counties, clerks either declined to open the attachment or the entire email got caught in spam filters.⁷¹

Gableman later used coms@wispecialcounsel.org as his email address, which he shared with his non-attorney intern, Zak Niemierowicz.⁷² His subordinates also

⁷¹ Jonathan Sadowski, *This Isn’t a Real Investigation’: Email Sent by Gableman to Election Clerks Raises Alarm*, Up North News (Sept. 15, 2021), <https://upnorth-news.com/2021/09/15/this-isnt-a-real-investigation-email-sent-by-gableman-to-election-clerks-raises-alarm/>; Scott Bauer, *Wisconsin election clerks confused by investigation email*, Associated Press (Sept. 14, 2021), <https://apnews.com/article/elections-wisconsin-voting-presidential-election-2020-a30b152f4c7c548b11af00dcb116e3ee>.

⁷² June 23, 2022 Hearing Tr. 51:18–22 [App’x 000043]; Chavez Aff., ¶¶10–11 [App’x 000121]. If Gableman was using this email address to communicate with clients, which apparently he was, sharing an email address with a non-attorney also raises confidentiality issues. SCR 20:1.6(a), (d); Oct. 27, 2021 Emails produced to American Oversight [App’x 000252–000253].

used anonymous email addresses, like 6@wispecialcounsel.org (Andrew Kloster) and 3@wispecialcounsel.org (Carol Matheis).⁷³ These subordinates also refused to provide even basic information about their roles as public officials; Kloster declined to answer questions from Mandell about where he was admitted to practice; and Matheis not only refused to answer the question of whether she is an attorney but also refused to provide her last name.⁷⁴

The effect of this scheme was to obscure the identity of who, exactly, was communicating from—and making demands on behalf of—Gableman’s office. This was consistent with how Gableman ran his office generally—obscuring who was working for him and what they were doing.⁷⁵ And whether he intended this result or not, it also resulted in many of Gableman’s emails being caught in spam or junk filters. When informed of this fact,⁷⁶ Gableman apparently took no steps to rectify the situation.

3. *Gableman’s team contacted represented parties directly instead of through counsel.*

Gableman committed related acts of misconduct by knowingly and repeatedly contacting represented parties. The Rules squarely prohibit this: “In representing a

⁷³ See emails in *Wisconsin Assembly’s Office of Special Counsel Election Investigation Records Part 1*, produced to American Oversight, pp. 8, 54, 204, <https://www.documentcloud.org/documents/21398319-wisconsin-assemblys-office-of-special-counsel-election-investigation-records> [App’x 000254–000256]; Chavez Aff., ¶10 [App’x 000121].

⁷⁴ Second Affidavit of Jeffrey A. Mandell (Feb. 17, 2023) [App’x 000257–000258].

⁷⁵ See Patrick Marley, *The Identity Of Michael Gableman’s ‘Carol M.’ Is A Mystery No Longer, But The Names Of Others Helping Him Remain Secret*, Milwaukee Journal Sentinel (Nov. 2, 2021), <https://www.jsonline.com/story/news/politics/2021/11/02/identity-michael-gablemans-carol-m-mystery-no-longer/6252935001/>.

⁷⁶ Lenz Aff., ¶3, Ex. B [App’x 000127–000128].

client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer 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.” SCR 20:4.2. Gableman knew that the City of Green Bay and its officers and employees had retained Law Forward, Stafford Rosenbaum, and States United Democracy Center—he was present at the city council meeting when the City retained these lawyers, and he (improperly)⁷⁷ commented on that decision directly.⁷⁸ His subordinates communicated with the City’s outside counsel when they negotiated away any potential requirement for in-person testimony. At the time, the City’s outside counsel expressly requested, both orally and in writing, that any further communication be directed to them.⁷⁹ Gableman publicly acknowledged the hiring on November 10, 2021.⁸⁰ And Gableman was certainly aware of the rule. *See In re Disciplinary Proceedings against Gende*, 2012 WI 107, ¶14, 344 Wis. 2d 1, 821 N.W.2d 393 (per curiam).⁸¹

Gableman nonetheless continued to contact Green Bay officials and employees, personally and through non-lawyer employees. On October 20 and 21, Matheis and

⁷⁷ See Section II.C., *infra*.

⁷⁸ Chavez Aff. ¶¶3–7 [App’x 000119–000120].

⁷⁹ Mandell Aff. ¶¶8–9, Ex. C [App’x 000070, 000096–000097].

⁸⁰ Anthony Dabruzzi, *Gableman Testifies On GOP Election Probe But Gives Lawmakers Few Specifics*, Spectrum News 1 (Nov. 11, 2021), <https://spectrumnews1.com/wi/madison/politics/2021/11/11/gableman-gives-testimony-on-gop-election-probe> (“[W]e have the City of Green Bay hiring the three law firms, so I don’t even know who I am allowed to talk with there.”).

⁸¹ At the time of this decision, Gableman was a Justice on the Wisconsin Supreme Court.

Gableman sent emails to City Attorney Vanessa Chavez⁸² regarding their unlawful subpoenas.⁸³ Those emails were also caught in a spam filter. The City’s outside attorney responded on November 19, after the emails were discovered, requesting that Gableman contact outside counsel and refrain from contacting the City directly.⁸⁴

Heedless of this request, two of Gableman’s investigators—Edward Chaim and Thomas Obregon—separately contacted another (non-lawyer) employee of the City of Green Bay shortly after, on December 3, 2021.⁸⁵ Both individuals identified themselves as working for the “Office of Special Counsel” (“OSC”) and Gableman had identified both as investigators in his employ in testimony on December 1, 2021.⁸⁶ We were once again required to respond.⁸⁷ At the time of these calls, Gableman was already litigating against Mayor Genrich. Rule 20:4.2 prohibited Gableman from taking this course of action, and we had repeatedly asked him not to conduct himself this

⁸² Wisconsin Ethics Opinion E-07-01 discusses the applicability of SCR 20:4.2 to in-house counsel. Wisconsin Ethics Opinion E-07-01 (effective July 1, 2007). Importantly, here, the City Attorney is an appointed official of the City and therefore had the normal authority to bind or obligate the City. *See* Green Bay, Wis., Municipal Code § 2-112. She was therefore entitled to the protection SCR 20:4.2 affords to represented parties. SCR 20:4.2 ABA Comment [7]. In addition, outside counsel specifically requested that Gableman speak only with them. Lenz Aff., ¶3, Ex. B [App’x 000127–000128]; Mandell Aff. ¶¶8–9, Ex. C [App’x 000070, 000096–000097].

⁸³ Chavez Aff., ¶¶10–11 [App’x 000121].

⁸⁴ Lenz Aff., ¶3, Ex. B [App’x 000127–000128].

⁸⁵ *Gableman v. Genrich*, Waukesha Cnty. Cir. Ct. Case No. 2021CV170 (Dkt. 51, Fuge Aff., ¶¶1–3) [App’x 000259].

⁸⁶ Corrinne Hess, *Michael Gableman reveals staffers in GOP-backed election investigation*, WPR (Dec. 1, 2021), <https://www.wpr.org/michael-gableman-reveals-staffers-gop-backed-election-investigation>.

⁸⁷ Lenz Aff., ¶3, Ex. B [App’x 000127–000128].

way. As a Wisconsin attorney receiving assistance from non-lawyers in his office, Gableman was responsible for ensuring that their conduct was “compatible with the professional obligations” of an attorney. SCR 20:5.3. He failed. Both his own actions and those of his subordinates violated SCR 20:4.2.

B. Gableman was dishonest toward the Circuit Court of Waukesha County.

While Gableman’s investigation resulted in considerable litigation, often because of his general incompetence and disdain for the law, he seems to have appeared as an attorney⁸⁸ in only two cases—the petitions against the mayors of Green Bay and Madison, eventually titled *Gableman v. Genrich*, Waukesha Cnty. Cir. Ct. Case No. 2021CV1710 (filed Nov. 29, 2021). Gableman submitted two pleadings as counsel in that case: Petitions for a “Writ of Attachment of the Person” naming Eric Genrich, Mayor of the City of Green Bay, and Satya Rhodes-Conway, Mayor of the City of Madison, as respondents. Because we represented Mayor Genrich, we focus on the former (the “Petition”).

As stated in Mayor Genrich’s Brief in Support of Motion for Sanctions: “Although it is very short—containing just five sentences—the Petition manages to contain several material misstatements of fact, which the Special Counsel knew or

⁸⁸ In most matters, despite having hired staff attorneys at taxpayer expense, and being an attorney himself, Gableman and the Office of Special Counsel chose to be represented by outside lawyers (at additional taxpayer expense). Gableman appeared as a witness in two cases involving open records requests: *American Oversight v. Vos*, Dane Cnty. Cir. Ct. Case No. 2021CV2440 (filed Oct. 8, 2021) and *American Oversight v. Assembly Office of Special Counsel*, Dane Cnty. Cir. Ct. Case No. 2021CV3007 (filed Dec. 20, 2021). Gableman’s appearance at a hearing in the latter case resulted in a previous referral to the Office of Lawyer Regulation. *American Oversight v. Assembly Office of Special Counsel*, Dane Cnty. Cir. Ct. Case No. 2021CV3007 (Dkt. 327, Decision & Order (June 15, 2022)) [App’x 000260–000262].

should have known were not supported by evidence.” Specifically, Gableman made the following misrepresentations to the Court:

1. Gableman averred that Mayor Genrich’s testimony was “unilaterally continued.” Neither word is true. Testimony was not “continued.” Instead, Gableman’s subordinate, Kloster, agreed that testimony would not be required until OSC had reviewed the documents produced and identified specific topics on which further inquiry was necessary. And this did not happen “unilaterally”—it was the product of negotiations between Kloster, on behalf of Gableman, and Mayor Genrich’s outside counsel. As the recipient of the October 14, 2021 letter memorializing the parties’ agreement, Gableman knew this statement was false, but swore to it anyway.⁸⁹
2. Similarly, Gableman knew that his October 21 email to the City Attorney— itself a violation of SCR 20:4.2’s prohibition against contacting a represented party—did not continue anything. Not only was it sent to an improper person, but it also did not specify what, if anything, he was attempting to do. At the time, there were three subpoenas involving Green Bay. The email makes no mention of Mayor Genrich, nor does it specify to which subpoena it refers. And before he filed the Petition, Gableman was notified that the email had been caught in a spam filter.
3. Third, none of this occurred “during a period of negotiations with the City attorney.” The City had been represented by outside counsel since October 5. Gableman was present when outside counsel were retained and had been informed multiple times of the same. And other than the initial conversations between Mandell and Kloster, there were no negotiations.

Gableman also misled the Court, in violation of SCR 20:3.3, by making material omissions when he filed the Petition. “[F]alse and misleading statements in briefs filed in court contravene not only Rule 802.05(1)(a) but also SCR 20:3.3, which requires candor toward tribunals.” *Wisconsin Nat. Gas Co. v. Gabe’s Constr. Co.*, 220 Wis. 2d 14, 19 n.3, 582 N.W.2d 118 (Ct. App. 1998); *see also State v. Bons*, 2007 WI

⁸⁹ Although a lawyer’s obligation of candor toward the tribunal is not limited to sworn statements, it is nonetheless noteworthy that the Petition was a verified pleading, sworn to personally by Gableman. Wis. Stat. § 946.32(1)(a); *see also* SCR 20:8.4 (professional misconduct for a lawyer to “commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects”).

App 124, ¶23, 301 Wis. 2d 227, 731 N.W.2d 367 (sanctioning attorney for certifying compliance with Wis. Stat. § 809.19(2)(a) when he omitted essential documents and finding such conduct violated SCR 20:3.3(a)); *Tomczyk v. Blue Cross & Blue Shield United of Wis.*, 951 F.2d 771, 778–79 (7th Cir. 1991) (noting that counsel’s misrepresentations to the court of both fact and law “disserve[d] the parties, opposing counsel, and this Court” and finding sanctions appropriate). By alleging that Mayor Genrich failed to appear “without justification” Gableman materially omitted the following key information, which the Court needed to analyze the issues:

1. *Gableman had already agreed that no testimony would be required without further conversations with the City of Green Bay.* This is the most galling example of Gableman’s violation of the Rule. Gableman’s office, through its conversations with the City’s outside counsel, had previously agreed that no such testimony would be required. Gableman failed to disclose this dispositive fact to the Court in his petition, which makes his allegation that Mayor Genrich (1) failed to appear and (2) that such failure was “without justification” plainly untrue.
2. *Gableman had publicly stated that no such testimony would be required.* Leaving aside his direct agreement with the City of Green Bay, by the time of the petition, Gableman had repeatedly said in the press that the subpoenas had been complied with and that any other requests for testimony would be worked out among the parties.
3. *There was parallel and potentially dispositive litigation ongoing in Dane County.* At the time Gableman filed his petition, the Dane County litigation in *Wisconsin Elections Commission v. Wisconsin Assembly* had been going on for over a month. Gableman knew this—he was a named defendant in *Wisconsin Elections Commission*. He also knew that case involved, *inter alia*, issues surrounding the validity of his attempts to require non-public, in-person testimony at a private office and the basic enforceability of the legislative subpoenas at issue. Gableman made no mention of this case in his Petition.
4. *Gableman’s October emails, which he claimed rescheduled testimony, were not timely delivered.* By the time Gableman filed his petition, Mayor Genrich’s attorneys had informed him that his inappropriate October emails to City Attorney Chavez had been caught in a spam filter. Gableman attached those emails to his Petition without telling the Court they had not been timely delivered. He thereby misled the Court to believe that the City or

the Mayor had deliberately ignored these emails, which he knew was not true.

In short, Gableman failed to inform the Court of any of the critical facts, a violation of his duty of candor under SCR 20:3.3. This requirement was, if anything, more pressing in this case, as Gableman originally sought an *ex parte* order against the Mayors, meaning that the Court might have been deprived of the normal advantages of the adversary process. Under the Rules, Gableman therefore had a heightened duty to disclose material facts. SCR 20:3.3, ABA Comment [14]. Gableman instead omitted precisely the information the Court needed to assess the relevant issues.

C. Gableman was dishonest toward the public.

Although Gableman was nominally working on behalf of the people of the State of Wisconsin, through their Assembly representatives, and taking taxpayer money to do so, he consistently misled the public regarding his role and authority in conducting his sham investigation.

1. Gableman misrepresented his authority.

Wisconsin sets a clear boundary between its judges and other officers, including attorneys. Wis. Stat. §§ 757.02(2) (judges not to hold other office); 757.19(b)–(d) (disqualification of judges who previously acted as a witness or counsel in an action); 757.22(1) (judge may not act as an attorney), 757.22(2) (attorney may not hold office in the office of the court); SCR 60.04(4)(c) (recusal rule for judges who previously acted as a lawyer or witness in the case). To that end, Wisconsin Supreme Court rules prohibit former or reserve judges from using the title of “judge,” depicting themselves in

judicial robes, or otherwise using the “prestige of judicial office” to enhance their personal or financial interests. Supreme Court of Wis., Judicial Conduct Advisory Committee, Opinion 97-6R (revised) (May 8, 1998). A recent American Bar Association article noted a consensus on this issue among the jurisdictions it surveyed:

Continued use of the judicial title while practicing law is the issue addressed in advisory opinions most frequently. All agree that a former judge who is now a practicing lawyer should not use the judicial title in any manner professionally and should actively discourage others from doing so. The American Bar Association noted in its 1995 Formal Advisory Opinion that the only reason a former judge would use the judicial title in the practice of law would be to create an appearance of an unfair advantage or expectations of an enhanced outcome. ABA Formal Adv. Op. 95-391.⁹⁰

The ABA Formal Advisory Opinion is clear:

A former judge who returns to the practice of law may not continue to use the titles “Judge” or “The Honorable.” He therefore may not have his telephone answered “Judge X’s office,” sign his correspondence and pleadings “Judge X,” or have his name appear on his nameplate or the firm letterhead as “Judge X” or “The Honorable.” Nor should he encourage others to refer to him as “Judge X” or “Your Honor” in the courtroom or otherwise in connection with legal proceedings.⁹¹

The ABA Committee determined the practice would violate Model Rule 7.1’s prohibition on false or misleading communications, the corollary ban on false or misleading letterhead, and Model Rule 8.4(e)’s prohibition on a lawyer implying that they can

⁹⁰ Marla N. Greenstein, *Ethics for Former Judges*, ABA (Nov. 6, 2020), https://www.americanbar.org/groups/judicial/publications/judges_journal/2020/fall/ethics-former-judges/#:~:text=The%20American%20Bar%20Association%20noted,95%2D391.

⁹¹ ABA Comm. on Ethics and Professional Responsibility, Formal Op. 391 (1995).

improperly influence officials.⁹² Wisconsin’s Rules contain each of these principles from the Model Rules.⁹³

Gableman, who previously served as both a justice on the Wisconsin Supreme Court and circuit court judge, violated this standard throughout 2021 and 2022. On September 20 and October 9, Gableman posted YouTube videos in which he captioned himself “Justice Mike Gableman (Retired).”⁹⁴ Five days later, Gableman posted another video, with the same caption for himself, using a fake background to give the appearance that he was standing in front of the bench in the Supreme Court of Wisconsin hearing room.⁹⁵ In both his December 1, 2021 and March 1, 2022 appearances before the Committee, Gableman did not object or make any correction when the chairperson referred to him as “Justice Gableman.”⁹⁶

Gableman also misled the public regarding the nature of his authority. In the October 9 video, he said, “Recently, my office issued the first subpoenas of our investigation into the 2020 election. We issued those subpoenas to city clerks and state officials who administer elections.” Similarly, on October 14, Gableman said his office

⁹² Elizabeth K. Thorp & Kimberly A. Weber, *Recent Opinions from the American Bar Association Standing Committee on Ethics and Professional Responsibility*, 9 Geo. J. Legal Ethics 1009, 1013 (1996).

⁹³ The Model Rule 8.4(e) discussed in this formal opinion is currently Rule 8.4(d).

⁹⁴ Wisconsin Office of Special Counsel, *Special Counsel Announces Updates in Elections Investigation* (Oct. 9, 2021), <https://www.youtube.com/watch?v=352AnQI5Wgs>; Wisconsin Office of Special Counsel, *Wisconsin Office of Special Counsel Outlines Parameters of Investigation* (Sept. 20, 2021), <https://www.youtube.com/watch?v=hBmPMFWn74E>.

⁹⁵ *Wisconsin Special Counsel explains subpoena process*, *supra* n.19.

⁹⁶ *Hearing*, Assembly Committee on Campaigns and Elections (Dec. 1, 2021), *supra* n.31, beginning at 6:30; *Hearing*, Assembly Committee on Campaigns and Elections (Mar. 1, 2022), <https://wiseye.org/player/?clientID=2789595964&eventID=2022031006>, beginning at 1:00.

“began issuing subpoenas.” Both statements are false. His office had no authority to issue subpoenas; only the Legislature has that power. Wis. Stat. § 13.31. The relevant subpoenas were all issued by the Assembly under Chapter 13—signed by Speaker Vos and Chief Clerk Blazel. Assembly R. 3(o). Gableman also said he might “exercise the power granted to us” to compel respondents to testify or produce documents. But he and his office had no such power—neither the Assembly nor Speaker Vos had given Gableman that authority in either the Coordinating Attorney Independent Contractor Agreement or the First Amendment. It is the Legislature itself, not independent contractors, that has the sole authority to compel testimony pursuant to legislative subpoenas. Wis. Stat. § 13.32(1)–(2). To exercise this enforcement power, the Legislature must follow a precise procedure. The chair of the legislative committee that requested the testimony must certify the failure to appear. Wis. Stat. § 13.34. Then, either the entire Legislature or one of its houses must vote on a finding of contempt. Wis. Stat. § 13.26. This ensures that any action in connection with the subpoenas is taken by the Legislature and complies with principles of transparency and accountability governing legislative action in Wisconsin—including the requirement that such action be undertaken by elected officials through public meetings and by a public vote of the whole. Wis. Const. art. IV, § 10; *see also*, *Martinez v. DILHR*, 165 Wis. 2d 687, 701, 478 N.W.2d 582 (1992) (importance of “legislative accountability”). Either ignorant of this basic rule, or heedless of it, Gableman implied he (as opposed to politically accountable legislators), could wield this power.

These statements,⁹⁷ Gableman’s misuse of judicial iconography,⁹⁸ and his use of a wholly invented seal for the “Office of Special Counsel”⁹⁹ are all of a piece. In each, Gableman sought to inflate the power and prestige of his position and imply that he possessed powers of the State.¹⁰⁰ But the Office of Special Counsel was never authorized by statute or rule, nor is it found in the Wisconsin Constitution.¹⁰¹ Gableman was acting, at most, as a contractor to the Assembly, which means he had no independent authority to enforce or administer any law, but merely was providing counsel to the Assembly pursuant to a contract. *Cf. Waity v. LeMahieu*, 2022 WI 6, ¶39, 400 Wis. 2d 356, 969 N.W.2d 263 (authority of the Legislature to hire attorneys). An amendment to that contract purported to create the Office of Special Counsel. Such attorneys are not vested with independent state power. Gableman’s statements and implications to the contrary were false and therefore violated the Rules.

⁹⁷ These were not the only lies contained in these videos, in which Gableman also said he had compelling evidence of election-law violations despite having admittedly barely started an investigation and said that witnesses would not be able to avail themselves of their Fifth Amendment rights. Gableman also said he was not challenging the results of the 2020 Election, but he ended up doing exactly that.

⁹⁸ Gableman persists in this conduct and appears in judicial robes in his current photograph on the State Bar website, <https://www.wisbar.org/directories/pages/lawyerprofile.aspx?Memberid=1024325>.

⁹⁹ *Second Interim Investigative Report on the Apparatus & Procedures of the Wisconsin Elections System*, *supra* n.34, p. 1.

¹⁰⁰ Similarly, Gableman named himself as plaintiff in *Gableman v. Genrich* and indicated he was acting “in his official capacity,” which he did not have. Waukesha Cnty. Cir. Ct. Case No. 2021CV170 (Dkt. 5, Genrich Pet.) [App’x 000100–000101].

¹⁰¹ The statutes permit the Governor to appoint special counsels, who assist or act in the stead of the Attorney General in specific circumstances. Wis. Stat. § 14.11(2). Special counsels may also be appointed pursuant to various other statutes. *See* Wis. Stat. §§ 5.05(2m)(c)6.a, 84.09(3m), 19.49(2)(b)5.a., 93.22(2), 108.14(3m), 440.25, 63.25(3). None of those statutes granted Gableman any authority.

Gableman’s videos contained other material lies about the nature of his investigation. For example, in his October 14 video, in the course of approximately 70 seconds,¹⁰² Gableman said: (1) that there was “no legitimate reason” for public officials to treat his sham investigation as “adversarial”; (2) that, because he lacked the authority to engage in any kind of “prosecution,” public officials (and presumably any other witnesses) would be precluded from invoking their constitutional rights; and (3) that it was not necessary for officials to hire lawyers. None of this was true.

First, Gableman had made the process adversarial by accusing public officials of violating election law, an allegation for which he had no evidence.¹⁰³ Subpoenas are an inherently adversarial mechanism, and frequently the subject of litigation, as they invoke the compulsive power of the state (in this case, through the Legislature). Gableman had threatened to invoke that power, although he improperly stated that it was something he, rather than the Legislature, possessed.¹⁰⁴

Second, Gableman’s statement that the Fifth Amendment does not apply outside a formal prosecution is, frankly, absurd. The United States Supreme Court has long held that the Fifth Amendment “unquestionably” protects someone from answering questions in a civil context. *United States v. Kordel*, 397 U.S. 1, 7 (1970) (“For Feldten need not have answered the interrogatories. Without question he could have

¹⁰² *Wisconsin Special Counsel explains subpoena process, supra* n.19, beginning at 1:23.

¹⁰³ *Wisconsin Office of Special Counsel Outlines Parameters of Investigation, supra* n.94, beginning at 1:11 (“some election officials acted unilaterally in deciding not to follow established state law...”).

¹⁰⁴ *Id.*

invoked his Fifth Amendment privilege against compulsory self-incrimination.”). Gableman knew this; he joined the majority of the Court in *State v. Lagrone* when it wrote: “[W]e agree that the Fifth Amendment privilege is applicable in “any ... proceeding, civil or criminal, formal or informal, where the answers might incriminate [an individual] in future criminal proceedings.” 2016 WI 26, ¶43, 368 Wis. 2d 1, 878 N.W.2d 636.¹⁰⁵ Of course, there was no significant crime or fraud associated with the 2020 General Election. Gableman’s statement was therefore not only substantively incorrect, but also improperly implied the existence of criminal activity where none actually existed.

Third, it was plainly necessary (and even in the absence of necessity, an unfettered right) for public officials to hire attorneys or rely on city attorneys and/or counsel at the Department of Justice. Subpoenas are legal processes which can often result in litigation.¹⁰⁶ And the Assembly subpoenas at issues in this case were unbelievably broad, and sought information that is protected by privilege or other statutes.¹⁰⁷ It

¹⁰⁵ The immunity provision of Wis. Stat. § 13.35 does not change this basic fact. First, it is not clear that this statute would have applied, as witnesses were not being subpoenaed to appear before a house of the Legislature or a committee. Wis. Stat. § 13.35. Moreover, this provision would not be binding on other jurisdictions or the federal government.

¹⁰⁶ See *Two Unnamed Petitioners*, 2015 WI 85, ¶91 (Gableman, J., with two justices joining in the opinion, and Prosser, J. joining in the result).

¹⁰⁷ Ex. A Documents, p. 8 (seeking “All documents pertaining to election administration related to interactions, communication with, or comments regarding the Office of the Clerk of the City of Green Bay and the Chief of Staff of the Office of the Mayor of the City of Green Bay.”) [App’x 000051]. This request would cover privileged communications that members of these offices may have had with the City Attorney or other counsel, and other privileged communications. See Wis. Stat. § 905.03; see also Wis. Stat. § 5.906(1) (confidentiality of voting machine software); Wis. Stat. § 995.50 (right of privacy).

also appeared to order respondents to potentially breach contracts without legal authority.¹⁰⁸ Indeed, the subpoenas, which Gableman apparently provided to the Assembly for signature,¹⁰⁹ contained so many errors of fact and law that we were frequently required to respond simply by itemizing the various ways in which they were inappropriate.¹¹⁰ Gableman himself would later, of course, frequently hire outside counsel, including in disputes about whether he had been sufficiently forthright in public-records disclosures. This included an instance in which he invoked (vague and improper) “privileges” against testimony.¹¹¹

These repeated falsehoods not only smeared the reputation of hard-working public servants, including our clients, but did lasting damage to public faith in legal and political institutions. This is particularly remarkable if one recalls that taxpayers paid Gableman to lie to them.

¹⁰⁸ Ex. A Documents, p. 8 (“Neither the Office of the Special Counsel nor the Committee recognizes any purported contractual privileges, such as non-disclosure agreements, as a basis for withholding the production of a Document.”) [App’x 000051].

¹⁰⁹ *American Oversight v. Office of Special Counsel*, Dane Cnty. Cir. Ct. Case No. 2021CV3007 (Dkt. 142, Records from OSC, p. 8 (Jan. 31, 2022)) [App’x 000263]. These emails also underscore the bad faith nature of Gableman’s sham investigation. As early as October 2021, he was already seeking to prove that (plainly lawful) activity “was illegal” rather than actually conducting an open-minded inquiry.

¹¹⁰ Letter, Daniel S. Lenz to Michael Gableman (Jan. 13, 2022); Letter, Daniel S. Lenz to Michael Gableman (Jan. 19, 2022); Letter, Daniel S. Lenz to Michael Gableman (Feb. 11, 2022) [App’x 000264–000271]. These letters identify basic errors in the subpoenas including, but not limited to: subpoenas issued to the incorrect offices, requests for legally protected information, requests for privileged information, requests that would compromise election security, and requests for information about equipment that the City of Green Bay does not use.

¹¹¹ *American Oversight v. Assembly Office of Special Counsel*, Dane Cnty. Cir. Ct. Case No. 2021CV3007 (Dkt. 327, Decision & Order, p. 2) (“The only witness to testify was its records custodian, Michael Gableman (‘Gableman’), who invoked his Fifth Amendment right to not incriminate himself.”) [App’x 000261].

2. *Gableman misled the public regarding the status of his litigation.*

Pursuant to his original contract with Speaker Vos, Gableman’s sham investigation was to conclude by October 31, 2021. It did not, in part because Gableman did no work for several months after being hired, and in part because once he began work, his own incompetence and inefficiency bogged him down. Instead, the process dragged out until August 12, 2022, when Gableman was ignominiously fired.

Gableman consistently misrepresented who caused delays in his sham investigation. As early as November 10, 2021—*before* the date he eventually claimed Mayors Genrich and Rhodes-Conway did not appear for “depositions”—Gableman began blaming others for his own delays. In public testimony, he blamed state and city officials for their “obstruction” and “varying degrees of lack of cooperation.”¹¹² Gableman repeated this lie in his First Interim Report, in which he complained about “wagon-circling” and litigation threats, as well as allegedly recalcitrant clerks.¹¹³ At the time, state and city officials alike had turned over tens of thousands of pages of documents in response to various requests by Gableman and others. There is no indication that anyone in Gableman’s office ever reviewed these documents.

¹¹² Laurel White, *Head of GOP-backed election investigation rebuffs calls for transparency, decries ‘obstruction,’* WPR (Nov. 10, 2021), <https://www.wpr.org/head-gop-backed-election-investigation-rebuffs-calls-transparency-decries-obstruction>. Of course, the basis of the “obstruction” was that the legislative subpoenas were unlawful in various ways, including because they purported to demand non-public testimony. Various officials, including Mayor Genrich, Mayor Rhodes-Conway, and Administrator Wolfe, indicated they would be willing to testify publicly, but Gableman chose never to acknowledge, much less accept, those offers.

¹¹³ Office of Special Counsel, *First Interim Report*, pp. 3, 5 (Nov. 10, 2021), <https://www.wispolitics.com/wp-content/uploads/2021/11/211110Interim.pdf>.

Gableman said this again before the Committee, on December 1, 2021. At that hearing, he announced that he had filed his petitions, saying, “Of all the clerks and of all the mayors, those two [Mayors Genrich and Rhodes-Conway] 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 city's election in November 2020[.]”¹¹⁴ Not true—both mayors had ample reason to believe there would be *no testimony* at all, and no other clerks or mayors had appeared pursuant to a subpoena.¹¹⁵ On April 12, 2022, on a podcast, Gableman shifted the blame to the judges hearing cases in which he was involved: “The judges who are dragging this out, they know better. They know that the law is very clear, that the Legislature gets to perform legislative oversight. They know that the Legislature is entitled to these interviews, they're entitled to these documents.”¹¹⁶ At the time, of course, the legitimacy of Gableman's process was hotly contested. Gableman's misrepresentation remains on his website.¹¹⁷

¹¹⁴ Kenneally, *Gableman heads to court*, *supra* n.32.

¹¹⁵ While various city and state officials delivered documents to Gableman, only one individual apparently ever appeared to testify after receiving a subpoena, and did so well after the December 1, 2021 Committee hearing. On February 16, 2022, John Morrissey, City Administrator for the City of Kenosha appeared in Brookfield. The “deposition” was adjourned within five minutes because Gableman, in yet another violation of his supervisory obligations under the Rules, attempted to have an out-of-state attorney take testimony. Transcript (Feb. 16, 2022) [App'x 000274–000287].

¹¹⁶ Patrick Marley, *Gableman accuses two judges of dragging out cases over the Republican election review*, Milwaukee Journal Sentinel (Apr. 13, 2021), <https://www.jsonline.com/story/news/politics/2022/04/12/gableman-accuses-judges-dragging-out-cases-over-gop-election-review/7294461001/>.

¹¹⁷ <https://www.wielectionreview.org/> (“The main barriers currently facing this office is the ongoing court battles to enforce the subpoenas we have issued.” “This investigation was

More importantly, Gableman was responsible for almost all litigation delays. For example: The business day before Gableman’s first brief was due in *Gableman v. Genrich*, without requesting leave of the court, Gableman filed an “Amended Petition for Writ of Attachment.”¹¹⁸ *But see* Wis. Stat. § 802.09(4). The Amended Petition purported to name additional respondents, who naturally sought to be heard.¹¹⁹ On April 1, 2022, the court held another scheduling conference and established a new briefing schedule.¹²⁰ Gableman’s counsel (Kevin Scott, an OSC employee) requested 45 days to file a new brief, which ended up being substantively identical to the earlier one.¹²¹ And when the July 11 hearing on Gableman’s petitions approached, he moved to adjourn because he had, again, hired new counsel.¹²²

In other litigation, Gableman consistently sought the maximum amount of time to perform any act, no matter how simple, and even when his office caused that

originally suppose to conclude in late 2021 but with the ongoing court battles and non compliance [sic] with this office, the Special Counsel must continue until parties are forced to cooperate with our office.”).

¹¹⁸ *Gableman v. Genrich*, Waukesha Cnty. Cir. Ct. Case No. 2021CV170 (Dkt. 75, Am. Pet. (Feb. 18, 2022)) [App’x 000288–000297]. Among its other problems, the Amended Petition named two officials—the city clerks of Green Bay and Madison—in the caption but contained no substantive allegations against either official.

¹¹⁹ *Gableman v. Genrich*, Waukesha Cnty. Cir. Ct. Case No. 2021CV170 (Dkt. Nos. 83, 85, 88, Ltrs. From Wis. Dept. of Justice, Racine, and Milwaukee (Feb. 24–March 7, 2022)) [App’x 000298–000304].

¹²⁰ *Gableman v. Genrich*, Waukesha Cnty. Cir. Ct. Case No. 2021CV170 (Minute Entry (April 1, 2022)) [App’x 000305–000307].

¹²¹ *Gableman v. Genrich*, Waukesha Cnty. Cir. Ct. Case No. 2021CV170 (Dkt. Nos. 76, 106, Br. of Petitioner (Feb. 22 and May 4, 2022)) [App’x 000308–000356].

¹²² *Gableman v. Genrich*, Waukesha Cnty. Cir. Ct. Case No. 2021CV170 (Dkt. 115, Petitioner’s Not. of Mtn. and Expedited Mtn. to Continue the July 11, 2022 Hrg. (June 1, 2022)) [App’x 000357–000362].

act to be necessary.¹²³ In one open records case, Judge Remington eventually issued a decision noting that “[Office of Special Counsel] has sought to continue every substantive hearing in this case. In fact, this is OSC’s seventh motion[] for a continuance, in which it now seeks to continue a hearing already rescheduled to a date OSC specifically requested.”¹²⁴

There is nothing inherently wrong with seeking continuances or extensions of time. But after wasting two of the six months originally slated for this process, Gableman repeatedly extended litigation—often needlessly—while publicly blaming others for the delay. These misrepresentations were the problem.

D. Gableman was dishonest towards his client, however defined.

Wisconsin attorneys owe a particular duty of honesty and forthrightness to their clients. To that end, a lawyer must “[p]romptly inform the client of any decision or circumstance with respect to which the client’s informed consent ... is required by these rules,” “keep the client reasonably informed about the status of the matter,” and “explain a matter to the extent reasonably necessary.” SCR 20:1.4(a)–(b). A lawyer must also inform the client of the basis or rate of the fee, and the client’s responsibility for expenses. SCR 20:1.5(b)(1). And a lawyer has an affirmative duty to render candid advice to their client. SCR 20:2.1. “A client is entitled to straightforward ad-

¹²³ Email from Michael D. Dean (Feb. 3, 2022) [App’x 000363–000364].

¹²⁴ *American Oversight v. Assembly Office of Special Counsel*, Dane Cnty. Cir. Ct. Case No. 2021CV3007 (Dkt. 385, Decision & Order, p. 2 (July 20, 2022)) [App’x 000365–000367].

vice expressing the lawyer’s honest assessment.” SCR 20:2.1 n.1. The identity of Gableman’s client was never clear. However, the information Gableman provided to his client or clients, however defined, did not comply with the Rules.

1. *Gableman obfuscated, or did not know, the identity of his client.*

A threshold issue raised by Gableman’s conduct as Special Counsel is who exactly his client was. Gableman changed his description often. Wisconsin State Assembly Resolution 15 authorized the hiring of “legal counsel” and investigators to assist the Assembly Committee on Campaigns and Elections.¹²⁵ The Coordinating Attorney Agreement Independent Contractor Agreement which Gableman and Speaker Vos signed was between the Assembly, as a whole, and Gableman’s LLC, Consultare. It contemplated that Gableman would issue weekly reports to Speaker Vos (who was not a member of the Committee).¹²⁶ Similarly, the July 1, 2021 First Amendment indicated that it was between the Assembly and Consultare, making no mention of the Committee. The undated Second Amendment provides that Gableman will provide a report to the Assembly and the Committee but otherwise incorporates the terms of the previous agreements.¹²⁷ And the final May 1, 2022 contract again iden-

¹²⁵ Ex. B Documents, pp. 2–4 [App’x 000001–000003].

¹²⁶ *Id.* p. 6 [App’x 000005]. Speaker Vos recently represented to the Wisconsin Court of Appeals that he never individually had a contract with Gableman or anyone else regarding investigations into the 2020 General Election. *American Oversight v. Vos*, Wis. Ct. of Appeals Case No. 2022AP1532 (App. Br., pp. 12–16 (Nov. 15, 2022)).

¹²⁷ *American Oversight v. Office of Special Counsel*, Dane Cnty. Cir. Ct. Case No. 2021CV3007 (Dkt. 176, Second Amendment to Agmt.) [App’x 000106–000109].

tifies the Assembly, as a whole, as the client. In his September 20, 2021 video, however, Gableman announced that “Speaker Robin Vos appointed me as special counsel to investigate our 2020 elections here in Wisconsin. In that capacity, I work directly for you, the people of Wisconsin.”¹²⁸

Gableman was also slippery on this question in court filings. In his initial petition in *Gableman v. Genrich*, he named himself as the petitioner, and claimed to be acting on behalf of the Wisconsin State Assembly.¹²⁹ On February 18, 2022, Gableman filed an “Amended Petition for Writ of Attachment,” indicating that he had previously been acting on behalf of the Assembly Committee on Campaigns and Elections.¹³⁰ Sometime between November 29, 2021, and February 18, 2022, Gableman

¹²⁸ Office of Special Counsel, *Wisconsin Office of Special Counsel Outlines Parameters of Investigation supra* n.94, beginning at 0:08. One might be tempted to assume that Gableman meant this as a rhetorical flourish. But he went a step further and solicited information from the public through his website, wifraud.com (since shuttered). If Gableman believed or represented that he worked for the public, he would have had a duty to keep that information confidential, which he did not. Fortunately, it appears the public was savvy enough to avoid this deception. Patrick Marley, *Michael Gableman asked for tips to help him find voter fraud. The public responded by trolling him*, Milwaukee Journal Sentinel (May 27, 2022), <https://www.jsonline.com/story/news/politics/2022/05/27/gableman-asked-voter-fraud-tips-voters-responded-trolling/9946576002/>. We do not believe Gableman ever represented, or could have represented, the people of Wisconsin, in part or in whole. That role is reserved for the state’s elected constitutional officers, not miscellaneous contractors. See Wis. Stat. §§ 14.11(1), 978.05. This only underscores Gableman’s casual relationship with the truth and the Rules.

¹²⁹ *Gableman v. Genrich*, Waukesha Cnty. Cir. Ct. Case No. 2021CV170 (Dkt. 5, Genrich Pet., p. 1) (referring to “Petitioner Michael J. Gableman, in his official capacity as Special Counsel to, and on behalf, of the Wisconsin State Assembly”) [App’x 000100]. Nothing in any of Gableman’s agreements with Vos authorized him to do this. The Assembly, by rule, authorizes only the Speaker to “represent and stand for the assembly.” Assembly Rule 3(k).

¹³⁰ *Gableman v. Genrich*, Waukesha Cnty. Cir. Ct. Case No. 2021CV170 (Dkt. 75, Am. Pet., ¶2) [App’x 000289].

changed his title from “Special Counsel to the Wisconsin Assembly” to “Special Counsel to the Wis[consin] Assembly Comm[ittee] on Campaigns and Elections.”¹³¹ Gableman never explained how, or why, these designations changed. These are not mere semantics; Gableman was misrepresenting himself to the public, the subjects of the subpoenas he served, and the Circuit Court of Waukesha County. And he was collecting taxpayer money all the while. The identity of his client, and therefore whose interests he had a duty to serve, was important.

2. *Gableman was dishonest toward his client.*

From any client’s perspective, Gableman’s ever-changing description of his representation would cause confusion as to the nature of his advice and to whom he owed a duty of loyalty. If one accepts that he was hired to provide legal counsel and assistance to either the Assembly or the Committee, Gableman failed in that duty, particularly in his “Second Interim Investigative Report,” the last report he delivered to the Assembly or the Committee. The Second Interim Investigative Report, delivered on March 1, was full of inaccuracies and baseless claims, but the most egregious was Gableman’s recommendation that the Legislature consider “de-certifying” Wisconsin’s electoral votes for President. In writing, Gableman hedged slightly, saying, “And the purpose of this Report is not to challenge certification of the Presidential

¹³¹ *Gableman v. Genrich*, Waukesha Cnty. Cir. Ct. Case No. 2021CV170 (Dkt. 5, Genrich Pet., p. 2) [App’x 000100]; *Gableman v. Genrich*, Waukesha Cnty. Cir. Ct. Case No. 2021CV170 (Dkt. 75, Am. Pet., p. 10) [App’x 000297].

election, though in Appendix II we do sketch how that might be done.”¹³² “Appendix II,” however, is less circumspect, saying that under the U.S. and Wisconsin constitutions:

[I]t is clear that the Wisconsin Legislature could lawfully take steps to decertify electors in any Presidential election, for example in light of violations of state election law that did or likely could have affected the outcome of the election. Furthermore, notwithstanding the current debate over amending the federal Electoral Count Act, the supreme responsibility for running state elections in Wisconsin is vested in our state Legislature—not any other state instrumentality, and not the federal government.¹³³

While stopping just short of recommending decertification, the Report says: “This Report has documented not just one, but a great collection of Wisconsin election law violations. As a political matter, the actions of state actors certifying electors in any Presidential election can be reconsidered as the Wisconsin Legislature sees fit using its plenary power under Article II of the federal Constitution, as recognized in *McPherson* and *Bush v. Gore*.”¹³⁴ The remainder of Appendix II is a rehash of an extreme (and discredited) interpretation of the Independent State Legislature Theory and an argument that the Electoral Count Act—which has governed presidential elections in the United States for 135 years—is unconstitutional. Of course, well before

¹³² Second Interim Investigative Report, *supra* n.34, p. 8. Shortly after this statement, however, Gableman says, “This Report thus does surface very big questions: how should Presidential election certification occur in Wisconsin going forward and would the Legislature have any remedies to decertify if it wanted to do so?” *Id.* at p. 9.

¹³³ *Id.* at p. 131.

¹³⁴ *Id.* at pp. 132–33.

Gableman made this astounding claim, the Legislative Council (and many others) had concluded that “decertification” was completely contrary to Wisconsin law.¹³⁵

Gableman was direct, however, in his testimony before the Committee coinciding with the release of this report, saying: “The legislature ought to take a very hard look at the option of decertification of the 2020 Wisconsin presidential election.”¹³⁶

Gableman’s call for decertification, premised on no evidence and contrary to all credible legal opinion (including that of the Legislative Council) may not, on its own, constitute misconduct—although it reflects on Gableman’s competence. It is fundamentally improper, however, to recommend a course of action to a client (and to the public) when the attorney *knows it is legally and practically impossible*—which is what occurred here. Almost immediately after making his recommendation to the Committee and the public, Gableman told Speaker Vos in a memorandum that “the legal obstacles to [decertification of the 2020 presidential election’s] accomplishment render such an outcome a practical impossibility.”¹³⁷ Gableman went on to state that not only was decertification not a practical option, but that its pursuit would be *detrimental* to the interests of his client: “Given the numerous and substantial legal obstacles, it is difficult to imagine an expenditure of state resources that would be more imprudent as it would require an unimaginable amount of time and money and at

¹³⁵ Bender-Olson & Hurley, *supra* n.35.

¹³⁶ Philip Bump, *The ludicrous effort to pretend that increasing voter turnout is nefarious*, Washington Post (Mar. 2, 2022), <https://www.washingtonpost.com/politics/2022/03/02/ludicrous-effort-pretend-that-increasing-voter-turnout-is-nefarious/>.

¹³⁷ Memorandum (unsigned, untitled), sent by Zakory Niemierowicz to Steve Fawcett on Mar. 16, 2022 [App’x 000368–000370].

best yield a result that is important only from a symbolic standpoint.”¹³⁸ Later in the memo, Gableman wrote, “This will be tied up in court for years and will virtually paralyze the Legislature in terms of all other business and there is no possibility that anything will be achieved other than a de facto full employment program for election law lawyers.”¹³⁹

Gableman’s office sent this memorandum to Speaker Vos—but apparently not to any member of the Committee—on March 16, 2022,¹⁴⁰ merely two weeks after his presentation to the Committee in which he urged them to pursue decertification, and apparently only at Speaker Vos’s prompting. Gableman had a history of failing to communicate with the Committee, the body he was ostensibly assisting.¹⁴¹ Gableman’s memo elides his about-face, arguing instead that he made “all of the points recited in this memo” during the hearing.¹⁴² But the difference in the two presentations is stark. Whether Gableman’s client was the Legislature, the Committee, or (as

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ Shortly after, Attorney James Bopp Jr., who was representing Gableman’s office, agreed that not only was the decertification proposal “pointless,” but that it was legally unavailable, telling the Committee that, after Electoral College votes are counted, “It’s over then. You can’t go back. ... There is no mechanism, no provision, no anything that would have any practical legal effect.” Scott Bauer, *Attorney calls decertifying 2020 election ‘pointless’*, Associated Press (Mar. 24, 2022), <https://apnews.com/article/2022-midterm-elections-biden-business-wisconsin-electoral-college-b8f02e744eeeba363716914d0afb586d>.

¹⁴¹ Will Kenneally, *Gableman Extends Messaging Effort in New Video as Subpoena Plans Remain Unclear*, PBS Wisconsin (Oct. 11, 2021), <https://pbswisconsin.org/news-item/gableman-extends-messaging-effort-in-new-video-as-subpoena-plans-remain-unclear/> (quoting then-Chair of the Committee, Janel Brandtjen: “Like the public, the committee members learn of Justice Gableman’s actions by radio interviews, newspaper reports and YouTube videos”).

¹⁴² Memorandum, *supra* n.137, p. 3 [App’x 000370].

he claimed) the public, he failed in his duty to provide honest advice, including the risks of pursuing a course of action without legal or factual support and which he knew would be harmful to the Assembly. Instead, Gableman presented a recommendation that he knew would be adverse to his (possible) client's interest, and which was contrary to the law. And he confined his actual advice and analysis to a private memorandum, having made contrary statements in public. Furthermore, by presenting a recommendation he knew to be legally impossible, Gableman violated SCR 20:3.1: "A lawyer shall not ... knowingly advance a claim or defense that is unwarranted under existing law ..." Gableman knew that the course of action he was promoting was legally impossible, but he urged it anyway.

III. Gableman filed suit and took other legal action even though he knew that these actions would serve only to harass or maliciously injure their targets.

Repeatedly during his time as Special Counsel, Gableman abused the legal process in violation of Supreme Court Rule 20:3.1(a)(3), which states: "A lawyer shall not (3) file a suit, assert a position, conduct a defense, delay a trial or take other action on behalf of the client when the lawyer knows or when it is obvious that such an action would serve merely to harass or maliciously injure another." This rule applies at minimum to Gableman's conduct in filing his "Petition for Writ of Attachment" against Mayors Genrich and Rhodes-Conway, as well as his wildly overbroad subpoena against Voces de la Frontera Action.

A. Gableman’s “Petition for Writ of Attachment” against Mayor Genrich was a tool of harassment and malicious injury.

As described at length in Section II.B., *supra*, there was no legitimate justification for Gableman to file his improper “Petitions for Writ of Attachment” against Mayors Genrich and Rhodes-Conway. As before, we focus on his behavior against Mayor Genrich, who was our client, but these arguments likely apply equally to his conduct with respect to Mayor Rhodes-Conway and other officials.

When Gableman filed his Petition accusing Mayor Genrich of refusing to comply with supposedly lawful subpoenas, Mayor Genrich had already negotiated, through counsel, appropriate responses with representatives of Gableman’s office. And the City had followed through on its commitments, producing nearly 20,000 pages of responsive materials. There was no need to file the legally irregular Petition, apparently designed for maximum dramatic effect. In short, it was a stunt. By filing it, Gableman garnered widespread press coverage of his false claim that Mayor Genrich had failed to respond in any way to his request for testimony and documents.¹⁴³

The most logical way to view Gableman’s filing of these petitions is as malicious harassment of his political opponents. Gableman had already publicly questioned the outcome of the 2020 election, in which Joseph R. Biden won Wisconsin

¹⁴³ See, e.g., Kenneally, *Gableman heads to court*, *supra* n.32; Patrick Marley, *Gableman seeks to jail two mayors if they don't sit for interviews as part of his partisan election review*, Milw. Journal Sentinel (Dec. 2, 2021, republished Jan. 7, 2022), <https://www.jsonline.com/story/news/politics/2021/12/02/gableman-seeks-jail-mayors-if-they-dont-sit-interviews-election-review/8840663002/>; *Head of GOP-led election probe says mayors could be jailed*, Fox 11 News (Dec. 2, 2021), <https://fox11online.com/news/election/michael-gableman-head-of-wisconsin-republican-led-election-probe-says-mayors-eric-genrich-green-bay-satya-rhodes-conway-madison-could-be-jailed?src=link>.

thanks in large part to wide margins in cities including Madison and Green Bay. Gableman was a partisan actor, who embraced conspiracy theories and publicly clashed with Democratic lawmakers in the Assembly during his tenure as Special Counsel.¹⁴⁴ Though hired to investigate and find the truth about the 2020 election in Wisconsin, he took the job with a known, clear bias in favor of one candidate and that candidate's unfounded claims about a stolen election, and against anybody who opposed him. This led him to initiate legal proceedings that served simply to harass Democratic mayors without advancing his investigation in any way.

B. The subpoena Gableman issued to Voces de la Frontera Action served to harass and maliciously injure that organization.

Gableman's service of an inappropriately overbroad legislative subpoena on Voces de la Frontera Action was similarly a tool of harassment and an attempt to maliciously injure that organization. As explained in Section I of the Background, *supra*, Gableman issued third-party subpoenas to Voces, demanding a staggering breadth of information including: (1) "Any and all communications" related to the 2020 General Election or any future elections; (2) internal communications in the organization; (3) financial information, including donor information; and (4) personal information about Wisconsin voters and citizens. After Voces, represented by the authors of this memorandum, intervened as a plaintiff to defend its First Amendment rights to protect that information, Gableman quickly dropped his demands rather than respond, effectively conceding that his demands were legally unsupportable.

¹⁴⁴ See Kenneally, *Gableman heads to court*, *supra* n.32.

Why raise those demands at all, then, if not to harass a nonpartisan, nonprofit organization dedicated to immigrants' rights and voter empowerment in Wisconsin's largest city?

IV. Gableman failed to abide by the rules governing the lawyer-client relationship.

However one views his status and duties throughout his tenure as Special Counsel, Gableman failed to follow the basic rules governing the relationship between lawyers and their clients. Gableman was not hired to litigate. He was hired, in theory, to assist the Committee and the Assembly, though he did no such thing. As discussed in Section II, *supra*, Gableman often obscured the identity of his client. Here, as elsewhere, Gableman's failures often redounded to the detriment of his client's (and the public's) interest.¹⁴⁵

A. Gableman failed to maintain a written fee agreement.

Attorneys must communicate, in writing, "the scope of the representation and the basis or rate of the fee and expenses for which the client shall be responsible." SCR 20:1.5(b)(1). Unsurprisingly, as the public fisc is involved, there are additional rules for when the government hires lawyers: Contracts for legal services with the

¹⁴⁵ For all the reasons discussed in Section I of the Background and Section I of the Description of Violations of Supreme Court Rules, *supra*, Speaker Vos and the Assembly knew or should have known that Gableman was never going to conduct a competent, good-faith investigation of the 2020 election. Gableman's performance only confirmed that. Any indignities they suffered from Gableman's conduct are directly traceable to their own decision to hire him and are in any event dwarfed by the harm Gableman inflicted on our clients and the people of the State of Wisconsin. It is nevertheless striking how thoroughly Gableman disrespected the client-attorney relationship, and we consider it another illustration of the defects in his performance as an attorney.

legislature must be signed by “an individual designated by the organization committee of the house making the purchase.” Wis. Stat. § 16.74(2)(b). This is consistent with other statutes, which uniformly require a written contract when the state hires outside counsel. *See, e.g.*, Wis. Stat. §§ 14.11(2)(a), (2)(b) (permitting the Governor to appoint special counsel, and requiring a “contract in writing”); 5.05(2m)(c)6, (permitting WEC to employ special counsel, and requiring a “written contract”); 19.49(2)(b)5 (permitting the Wisconsin Ethics Commission to employ special counsel, and requiring a “written contract”).

While working as Special Counsel, Gableman executed, sent, or received four documents that could conceivably be interpreted as meeting the requirements of SCR 20:1.5 and Wis. Stat. § 16.74:

1. The Coordinating Attorney Independent Contractor Agreement, signed by Gableman and Speaker Vos, with a term expiring on October 31, 2021. This Agreement requires that “any modification ... will be effective only if it is in writing and signed by the other party.”¹⁴⁶
2. The First Amendment signed by Vos and with a “/s/” mark in the space for Gableman’s signature. Includes, as a note, a date range of August 1, 2021 through December 31, 2021. The “First Amendment” does not otherwise address the length of the contract term.¹⁴⁷
3. The Second Amendment, submitted to the Circuit Court of Dane County on March 8, 2022. The Second Amendment contained no effective date but expired on April 30, 2022.¹⁴⁸
4. The “Agreement for Legal Services,” effective May 1, 2022.¹⁴⁹

¹⁴⁶ Ex. B Documents, p. 8 [App’x 000007].

¹⁴⁷ *Id.*, pp. 10–11, 13 [App’x 000009–000010, 000012].

¹⁴⁸ *American Oversight v. Office of Special Counsel*, Dane Cnty. Cir. Ct. Case No. 2021CV3007 (Dkt. 176, Second Amendment to Agmt.) [App’x 000106–000110].

¹⁴⁹ *Agreement for Legal Services*, *supra* n.42.

These documents establish that for long periods, including times during which Gableman initiated litigation purportedly on behalf of the Assembly, he had no contract with the Assembly or any other party.

Generously, one might consider it possible for a footnote to a budget, attached as an exhibit to an amendment, to change the term the parties agreed to in the original contract. However, as the Dane County Circuit Court determined, Gableman never executed the First Amendment. The First Amendment was required to be accepted by signature and, by its' own terms, "declined to create exceptions[.]"¹⁵⁰ The Court found that Gableman had not signed the amendment and, therefore, it was ineffective. "[OSC] does not provide any other evidence of Michael Gableman's acceptance of the 'First Amendment,' either orally or through his actions."¹⁵¹

Because the parties did not execute the First Amendment, Gableman's contract expired on October 31, 2021, approximately one month before he, purporting to stand in the place of the Assembly, filed the petitions in *Gableman v. Genrich*.¹⁵² Gableman and Speaker Vos, who *was* authorized to act on behalf of the Assembly, agreed that Gableman's authority would end on October 31, 2021. As a Wisconsin attorney, Gableman had no right or ability to continue acting on behalf of the Assembly after the end of the representation. If one accepts that the Assembly or Speaker Vos was a

¹⁵⁰ *American Oversight v. Office of Special Counsel*, Dane Cnty. Cir. Ct. Case No. 2021CV3007 (Dkt. 165, Decision & Order, p. 19–21) [App'x 000104–000105].

¹⁵¹ *Id.*

¹⁵² Ex. B Documents, p. 6; *Gableman v. Genrich*, Waukesha Cnty. Cir. Ct. Case No. 2021CV170 (Dkt. 1; 5, Petitions) [App'x 000098–000101].

client, then they had an absolute right to end any representation, subject only to liability for payment. SCR 20:1.16 n.4. Once a court found that the appointment (or re-appointment) was invalid, Gableman’s authority (whatever it was at the time), ended. *State ex rel. Three Unnamed Petitioners v. Peterson*, 2015 WI 103, ¶11, 365 Wis. 2d 351, 875 N.W.2d 49 (per curiam).¹⁵³

Even if Gableman had executed the First Amendment and assuming, hypothetically, that it was sufficient to extend the term of his contract, that extension expired on December 31, 2021, did not recommence until March 8, and expired again on April 30th. Gableman nonetheless continued in his destructive work. In the beginning of 2022, both personally and via a spokesperson, Speaker Vos made statements regarding the ongoing validity of any contract with Gableman, indicating his office was in “negotiations” with Gableman, but nothing had been written.¹⁵⁴ In his testimony before the Committee on March 1, Gableman confirmed he did not have a continuing contract. In response to a direct question about whether he had a contract, Gableman testified that his contract had expired but that he believed he nonetheless

¹⁵³ At the time of this decision, Gableman was a Justice on the Wisconsin Supreme Court.

¹⁵⁴ Molly Beck, *Wisconsin Assembly Speaker Robin Vos in talks with Michael Gableman to extend contract for 2020 election review*, Milwaukee Journal Sentinel (Jan. 6, 2022), <https://www.jsonline.com/story/news/politics/elections/2022/01/06/robin-vos-talks-michael-gableman-extend-contract-2020-wisconsin-election-review/9115268002/> (quoting Speaker Vos’s spokeswoman as saying, “Nothing has been formally written yet” and that Speaker Vos is “negotiating the terms of [a] contract extension”); Matt Smith, *Speaker Robin Vos routinely updating Trump on Wisconsin election investigation*, wisn.com (Jan. 5, 2022), <https://www.wisn.com/article/speaker-robin-vos-routinely-updating-former-president-trump-on-election-investigation/38678977#> (“There is no official extension,” Vos said. “We are in the process of negotiating that, but certainly I want him to conclude the work.”).

was authorized to continue acting on behalf of the Assembly.¹⁵⁵ Regardless of Gableman’s subjective beliefs, the Wisconsin statutes, the rules of professional conduct governing attorneys in the State, and the express language of his previous contracts all require him to have an extension in writing. Gableman failed to meet this basic requirement, while nonetheless collecting taxpayer money, for two to four months of what turned out to be a 12-month “investigation.” During that time, he litigated (nominally on behalf of the Assembly), presented two interim reports, and hired outside counsel at a rate of \$450/hour, a cost borne by the public.¹⁵⁶

B. Gableman’s actions exceeded the scope of his authority under any of the operative agreements.

None of the documents Gableman executed, and in which he was required to define the scope of the representation, contemplated that Gableman would or authorized Gableman to initiate litigation. He nonetheless filed suit in Waukesha County and sought to jail the Mayors of Green Bay and Madison.

Neither Assembly Resolution 15, nor the May 28 and August 27, 2021 ballots from the Assembly Committee on Organization, which authorized Speaker Vos to hire a special counsel, granted the power to file suit. Rather, they authorize the Speaker to “hire legal counsel and employ investigators”¹⁵⁷ and to “designate special counsel”

¹⁵⁵ *Hearing*, Assembly Committee on Campaigns and Elections (March 1, 2022), *supra* n.96, beginning at 2:05:47.

¹⁵⁶ Agreement for Legal Services (Nov. 17, 2021) [App’x 000371–000373].

¹⁵⁷ Ex. B Documents, p. 6 [App’x 000005]; *Gableman v. Genrich*, Waukesha Cnty. Cir. Ct. Case No. 2021CV170 (Dkt. 1; 5, Petitions) [App’x 000098–000101].

who “shall direct an elections integrity investigation, assist the Elections and Campaign Committee, and hire investigators and other staff to assist in the investigation.”¹⁵⁸ There is no mention of, or authorization to pursue, litigation.

The initial contract between Speaker Vos and Gableman, which was temporarily extended by the Second Amendment, is even clearer that litigation was not contemplated. It sets forth six services to be rendered, none of which involves or implicates litigation.¹⁵⁹ Instead, Speaker Vos and Gableman agreed that Gableman would “[c]oordinate the day to day investigatory work,” which included receiving, analyzing and compiling investigatory reports. That is a far cry from attempting to put elected officials in jail.

Nor can it be the case that, by signing subpoenas, Speaker Vos or the Assembly Chief Clerk implicitly authorized Gableman to start this type of *ultra vires* enforcement action. SCR 20:1.5(c) includes a presumption that, when there is a consent executed by both the lawyer and client, “the representation is limited to the lawyer *and*

¹⁵⁸ Ex. B Documents, p. 5 [App’x 000004].

¹⁵⁹ In January 2022, the Committee adopted Motion 1. Whatever its intent, this motion cannot take the place of an actual contract authorizing Gableman to act on the Assembly’s behalf. It meets none of the requirements of Wis. Stat. § 16.74, nor does it meet the requirements of either ballot adopted by the Assembly, which delegated to Speaker Vos the authority to hire and direct special counsel. This motion, while it does purport to authorize Gableman to use legislative subpoenas, pointedly contains nothing that would permit him to initiate or prosecute litigation on behalf of the Committee. Pursuant to Assembly Resolution 15, Wisconsin statutes, and the subsequent votes of the Assembly, the Committee did not have the authority to hire (or rehire) special counsel. This was no mere trifle or technicality. Nor was this a “purely intra-legislative” concern, as Gableman’s lawless activities threatened the liberty of others. *Cf. State ex rel. Wisconsin Senate v. Thompson*, 144 Wis. 2d 429, 435, 424 N.W.2d 385 (1988).

the services described in the writing.” SCR 20:1.5(c)(2)a. Whoever the client was, litigation was not among the services described in the writing. Gableman’s actions encroached on a function reserved to the Assembly, as enforcement of this type of subpoena is vested solely in the Legislature itself. Wis. Stat. § 13.32.¹⁶⁰ By acting outside the defined scope of his authority, and by informing the Committee and the Assembly only after he filed suit, Gableman violated the letter and spirit of SCR 20:1.5. Moreover, by initiating litigation in the guise of his role as Special Counsel after his engagement had lapsed, Gableman violated SCR 20:1.16, which prohibits a lawyer from representing a client once the lawyer has been discharged. SCR 20:1.16(a)(3). This Rule protects the client’s basic right to counsel of their choice. *See Koschkee v. Evers*, 2018 WI 82, ¶¶12–13, 382 Wis. 2d 666, 913 N.W.2d 878.¹⁶¹ Whether his client was the Assembly, the Committee, or Speaker Vos, Gableman unilaterally continued the relationship and pretended to extend authority he never had.

C. Gableman failed to withdraw when terminated.

Gableman also violated SCR 20:1.16 by failing to withdraw once Speaker Vos terminated the contract (again) on August 12, 2022. SCR 20:1.16(a)(3) is mandatory: “where representation has commenced [a lawyer] shall withdraw from the representation of a client if: ... (c) the lawyer is discharged.” Because of his outsized reliance

¹⁶⁰ Enforcement of a legislative subpoenas requires a vote of the Legislature, having considered the facts and circumstances of noncompliance. Even if the Legislature could delegate enforcement and had attempted to do so here, the actions Gableman took in the absence of such a vote of the Assembly would be unlawful.

¹⁶¹ At the time of this decision, Gableman was a Justice on the Wisconsin Supreme Court.

on taxpayer-funded outside counsel, Gableman appeared as an attorney only in *Gableman v. Genrich*, where he signed the initiating petitions. That case was pending when Speaker Vos fired Gableman, but Gableman failed to withdraw, creating unneeded confusion that the Court and the parties had to address.¹⁶²

D. Gableman publicly engaged in conflicts with Speaker Vos.

Whoever Gableman’s client was, he largely communicated with Speaker Vos and Vos’s office. Here again, Gableman did not meet the standards imposed on attorneys dealing with clients, but instead operated largely on his own.

Gableman engaged in open conflict with Speaker Vos and the Assembly, particularly in the summer of 2022. The Rules impose a duty of loyalty on all lawyers representing clients. *See* SCR 20:1.7 ABA Comment 1 (“Loyalty and independent judgment are essential elements in the lawyer’s relationship to a client.”). But Gableman put his self-interest above anyone else’s. In April 2022, Gableman appeared on Steve Bannon’s podcast and urged Bannon’s listeners to intercede on Gableman’s behalf, contrary to Speaker Vos (and therefore, at least as it pertained to his contract, the Assembly’s) apparent wishes. Gableman told Bannon that Speaker Vos’s office was planning to end the investigation, and requested that his listeners call and email Speaker Vos to change his mind, saying, “There must be more investigation.”¹⁶³ Gableman would become even more adverse to Vos over the summer, despite continuing

¹⁶² *Gableman v. Genrich*, Waukesha Cnty. Cir. Ct. Case No. 2021CV170 (Dkt. 141–144 (Aug. 19–24, 2022)) [App’x 000374–000384].

¹⁶³ Molly Beck, *On Steve Bannon podcast, Michael Gableman appeals to Trump supporters for help keeping the doors open on his Wisconsin election review*, Milwaukee Journal Sentinel (Apr. 8, 2022), <https://www.jsonline.com/story/news/politics/elections/2022/04/08/gableman->

to allegedly work for the Assembly, eventually not only endorsing Vos’s primary opponent, but recording an ad claiming, “You know, Robin Vos never wanted a real investigation into the 2020 election in Wisconsin.”¹⁶⁴ Gableman was strident when he appeared again on Bannon’s podcast in August, falsely accusing Speaker Vos of stealing the 2020 election:

[Vos] oversaw the implementation of all the odious apparatus that the Wisconsin Elections Commission put to use to steal the election from—and I’m not even going to say from a particular candidate. I’m going to say they stole it from the voters and the good citizens of the state of Wisconsin.¹⁶⁵

Speaker Vos terminated Gableman shortly after.

Gableman is entitled to hold whatever fringe political beliefs he wishes. But having agreed to undertake a representation as an attorney and communicate through Speaker Vos, Gableman owed a duty of loyalty. He violated that duty by urging political extremists to intercede on his behalf and contrary to the stated interests of his client.

Gableman was also obliged to maintain his client’s confidences. SCR 20:1.6(a). Like the duty of loyalty, this is a foundational principle governing attorney conduct.

[appeals-trump-backers-help-keep-wisconsin-election-review-alive-steve-bannon/9509305002/](https://www.jsonline.com/story/news/politics/elections/2022/08/06/michael-gableman-endorses-robin-vos-opponent-adam-steen/10255706002/).

¹⁶⁴ Molly Beck, *Robin Vos gave Michael Gableman \$11,000 a month to review the 2020 election. Now Gableman wants Vos to lose his job.*, Milwaukee Journal Sentinel (Aug. 6, 2022), <https://www.jsonline.com/story/news/politics/elections/2022/08/06/michael-gableman-endorses-robin-vos-opponent-adam-steen/10255706002/>.

¹⁶⁵ Patrick Marley, *Wisconsin GOP fires election investigator who pushed false fraud claims*, Washington Post (Aug. 12, 2022), <https://www.washingtonpost.com/politics/2022/08/12/wisconsin-gop-fires-election-investigator-who-pushed-false-fraud-claims/>.

See SCR 20:1.6 ABA Comment 2 (“A fundamental principle in the client-lawyer relationship is that, in the absence of the client’s informed consent, the lawyer must not reveal information relating to the representation.”). A lawyer may not reveal information related to the representation of the client even if they believe it is to the client’s benefit. *In re Disciplinary Proceedings Against O’Neil*, 2003 WI 48, ¶¶17, 20, 261 Wis. 2d 404, 661 N.W.2d 813 (per curiam). Notwithstanding open records laws, public officers and entities enjoy the protections of attorney-client privilege in Wisconsin. Wis. Stat. § 905.03; *Wisconsin Newspress, Inc. v. Sch. Dist. of Sheboygan Falls*, 199 Wis. 2d 768, 782, 546 N.W.2d 143, 148 (1996).

Gableman knew this basic rule. Indeed, he had explicitly agreed to keep his communications with Speaker Vos’s office confidential.¹⁶⁶ During the March 1 Committee hearing, Gableman acknowledged this duty, saying that he “shouldn’t go too far into detail” regarding conversations with Speaker Vos’s office, but nonetheless describing the contents of those conversations.¹⁶⁷ By April, Gableman was even less restrained, gleefully reporting the contents of his conversations with Speaker Vos to a large audience, and for Gableman’s own purposes.¹⁶⁸ This is a blatant violation of

¹⁶⁶ Ex. B Documents, pp. 6–9 [App’x 000005–000008].

¹⁶⁷ *Hearing*, Assembly Committee on Campaigns and Elections (Mar. 1, 2022), *supra* n.96, beginning at 2:06:00.

¹⁶⁸ Shawn Johnson, *More than year after being hired by Robin Vos, Michael Gableman looks to put powerful speaker out of a job*, WPR (Aug. 8, 2022), <https://www.wpr.org/more-year-after-being-hired-robin-vos-michael-gableman-looks-put-powerful-speaker-out-job>. Gableman also discussed logistical conversations with Speaker Vos’s office during his April appearance on Bannon’s podcast.

SCR 20:1.6(a). Gableman's agreement with Speaker Vos itself creates an ethical issue. If he was supposed to be working on behalf of the Committee, of which Speaker Vos is not a member, he should have been communicating with them. But he was not. And if he believed he was communicating with a client *via* Speaker Vos, he failed to square his obligation to maintain confidentiality with the requirements of Wisconsin's robust open records law. Indeed, many of Gableman's communications with Speaker Vos were released.¹⁶⁹

V. Violations of the basic rules of legal practice.

Gableman violated several additional basic rules of legal practice in this period.

A. Gableman hired attorneys unlicensed to practice in Wisconsin, then failed to supervise them.

Gableman hired several out-of-state attorneys to work under him at the Office of Special Counsel and did not adequately supervise their activities. This is notable because his investigation and the procedural tools at his disposal were both governed primarily by state, rather than federal law, so out-of-state attorneys could not be expected to have familiarity with the relevant provisions.

Andrew Kloster, for example, was not a licensed Wisconsin attorney when he worked for Gableman (though he applied for Bar membership), and his actions demonstrated his lack of fitness to practice here. Attorney Mandell outlined Kloster's ethical violations in a letter submitted to the Board of Bar Examiners earlier this

¹⁶⁹ Molly Beck, *On Steve Bannon podcast, Michael Gableman appeals to Trump supporters for help keeping the doors open on his Wisconsin election review*, *supra* n.163.

year, which we attach here for reference.¹⁷⁰ As Mandell describes, he first spoke with Kloster about the OSC's subpoenas to the City of Green Bay and Mayor Genrich in October 2021, when Kloster had recently been hired or contracted to work with OSC. After Attorney Mandell and his co-counsel, Attorney Mel Barnes, contacted OSC about the subpoenas to the City of Green Bay and its officials, Kloster reached out in response, from an out-of-state phone number. Kloster refused to clarify his role with OSC, then insisted on negotiating the terms of subpoenas the Assembly had issued, even after being reminded that engaging in such negotiations was the practice of law, for which he was not licensed in Wisconsin. Similarly, Carol Matheis, who also spoke to Mandell, refused to identify herself or indicate whether she was an attorney.

Gableman also hired an Arkansas attorney named Clinton Lancaster to work for OSC. Lancaster is not licensed to practice law in Wisconsin. This did not stop him from attempting to negotiate responses to Assembly subpoenas with the City of Milwaukee, a co-respondent in *Gableman v. Genrich*.¹⁷¹ He also attempted to depose a Kenosha city official outside the supervision of a Wisconsin attorney.¹⁷² Gableman either ordered or authorized Lancaster to engage in this unauthorized practice of law.

¹⁷⁰ Jeffrey A. Mandell, *Letter to Board of Bar Examiners* (April 4, 2022) [App'x 000385–000389].

¹⁷¹ *Gableman v. Genrich*, Waukesha Cnty. Cir. Ct. Case No. 2021CV170 (Dkt. 133, Brief, pp. 16–19). [App'x 000194–000197]; Transcript (Feb. 16, 2022) [App'x 000274–000287].

¹⁷² Patrick Marley, *A deposition in Gableman's election investigation unraveled when it was to be conducted by an unlicensed attorney*, Milwaukee Journal Sentinel (June 8, 2022), <https://www.jsonline.com/story/news/politics/2022/06/08/gableman-wisconsin-election-probe-hit-snap-over-unlicensed-attorney/7536778001/>.

Gableman (or his LLC) accepted the representation, and hired out-of-state attorneys. Like any other attorney managing other lawyers, Gableman was required to “make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.” SCR 20:5.1(b). He is directly answerable for any conduct which he either knew of or ordered. SCR 20:5.1(c). This rule is even more important where, as here, Gableman supervised lawyers who may not otherwise be familiar with the Rules or be subject to the basic guidelines established in the Rules. Instead, he either ordered or permitted attorneys under his supervision to engage in the unlicensed practice of law.

B. The attorneys and other individuals Gableman hired or contracted with had interests adverse to the state of Wisconsin in other matters, causing potential conflict-of-interest problems.

As discussed in Section II, *supra*, it is not clear who Gableman was representing during his tenure as Special Counsel. To the extent he was representing the people of the State of Wisconsin, or entities of state government, however, it is important that he hired and worked with various actors who were adverse to the State. This violates the Rules.

Inherent in the duty of loyalty, and explicitly required by the Rules, is the requirement that lawyers avoid those conflicts that would negatively impact their ability to put their client’s interests first. The Rules therefore prohibit lawyers from taking on representations where there is a conflict with past or current clients, or where the lawyer’s personal interest poses a conflict of interest. SCR 20:1.7–9. Gableman did the opposite, staffing his office with individuals who were obviously and openly

hostile to the interest of the State of Wisconsin and various officials, including members of the Legislature. Gableman welcomed these actors, who had all eschewed the truth about the November 2020 Election in favor of conspiracy theory and endless challenges, into the office Gableman was supervising.

Erick Kaardal, an attorney who worked closely with Gableman in some vague capacity (see section IV.C, *infra*), has filed multiple lawsuits and complaints against the state of Wisconsin.¹⁷³ Most relevant to his work with Gableman, Kaardal filed two lawsuits in the immediate aftermath of the 2020 election baselessly challenging the results of that election, both as special counsel to the Thomas More Society on behalf of the “Wisconsin Voters Alliance.” In November 2020, he filed a petition for leave to commence an original action against the Wisconsin Elections Commission at the Wisconsin Supreme Court. The Court denied the petition, with Justice Hagedorn in concurrence calling it “woefully deficient” and going on to comment on its harmfulness to democracy itself: “Something far more fundamental than the winner of Wisconsin’s electoral votes is implicated in this case. At stake, in some measure, is faith in our system of free and fair elections, a feature central to the enduring strength of

¹⁷³ American Oversight has outlined the nature of Mr. Kaardal’s involvement with the OSC. See American Oversight, *Documents posted on Wisconsin Assembly Election Review’s Website Further Expose Inquiry’s Partisan Leanings* (Apr. 21, 2022), <https://www.americanoversight.org/documents-posted-on-wisconsin-assembly-election-reviews-website-further-expose-inquirys-partisan-leanings>.

our constitutional republic.”¹⁷⁴ The denial of the petition, and Justice Hagedorn’s concurrence, both received media attention.¹⁷⁵ The idea that the attorney behind this petition could competently assist a good-faith investigation of the 2020 election results for the people of Wisconsin is ludicrous.

Kaardal filed the second lawsuit in December 2020 in the U.S. District Court for the District of Columbia, attempting to overturn the result of the election by prohibiting the Vice President and Congress from counting electoral votes unless state legislatures, including Wisconsin, “certified” the electors, a practice foreign to the democratic process in Wisconsin, both now and in every presidential election since statehood.¹⁷⁶ Kaardal filed this lawsuit against, among others, Governor Tony Evers, Speaker Robin Vos, and Senator Howard Marklein. For Gableman to later work with Kaardal on a taxpayer-funded review of the election that Kaardal had already tried to tar as illegitimate in both state and federal court strongly suggests a conflict of interest. In addition, while sharing an office with Gableman, and while performing

¹⁷⁴ *Wisconsin Voters Alliance v. Wis. Elections Comm’n*, No. 2020AP1930-OA (Order, Dec. 4, 2020), <https://electioncases.osu.edu/wp-content/uploads/2020/11/WVA-v-WEC-Order-Denying-Petition.pdf>.

¹⁷⁵ See, e.g., Jon Swaine et al, *Conservative nonprofit group challenging election results around the country has tie to Trump legal adviser Jenna Ellis*, Washington Post (Dec. 7, 2020), https://www.washingtonpost.com/politics/thomas-more-jenna-ellis/2020/12/07/09057432-362d-11eb-b59c-adb7153d10c2_story.html.

¹⁷⁶ *Wisconsin Voters Alliance v. Pence*, No. 20-cv-3791-JEB (D.D.C.) (Compl., filed Dec. 22, 2020), <https://s3.documentcloud.org/documents/21675667/dc-district-initial-complaint.pdf>; Wis. Stat. §§ 7.70(3), (5)(b) (certification of presidential electors).

work apparently on Gableman’s behalf, Kaardal repeatedly sued a state agency—the Wisconsin Elections Commission.¹⁷⁷

These were far from the only characters whose conduct before or while working for the OSC raises questions of potential conflicts of interest. In addition to Chaim and Obregon, discussed in Section II.A.3, *supra*, Gableman hired additional non-attorney subordinates for whose conduct Gableman is answerable. SCR 20:5.3. This included Jay Stone, an election-conspiracy theorist. Stone is not an attorney, but is an enthusiastic *pro se* litigator. OSC records show that Stone was employed by the office between February 16 and March 1, 2022, and was paid \$3,250.¹⁷⁸ Stone filed a complaint against WEC Administrator Meagan Wolfe on October 19, 2021, which was resolved on February 4, 2022, less than two weeks before Stone entered OSC’s employ.¹⁷⁹ Stone filed another complaint against WEC staff on November 1, 2021, under

¹⁷⁷ Kaardal’s sublease ran from September 13, 2021, through September 30, 2022. See American Oversight, *Wisconsin Assembly Records of Gableman Investigation Costs and Contracts*, p. 72, <https://www.documentcloud.org/documents/21114423-wi-rep-21-1493-a#document/p72> [App’x 000392]. On January 6, 2022, during the term of this lease and collaboration, Kaardal filed five separate lawsuits against the Wisconsin Elections Commission in five different counties: *Carlstedt vs. Wis. Elections Comm’n*, Brown Cnty. Cir Ct. Case No. 2022CV24 (filed Jan. 6, 2022); *Thomas vs. Wis. Elections Comm’n*, Kenosha Cnty. Cir Ct. Case No. 2022CV16 (filed Jan. 6, 2022); *Prujansky vs. Wis. Elections Comm’n*, Racine Cnty. Cir Ct. Case No. 2022CV24 (filed Jan. 6, 2022); *Liu vs. Wis. Elections Comm’n*, Dane Cnty. Cir Ct. Case No. 2022CV46 (filed Jan. 6, 2022); *Werner vs. Wis. Elections Comm’n*, Milwaukee Cnty. Cir Ct. Case No. 2022CV150 (filed Jan. 6, 2022).

¹⁷⁸ American Oversight, *Documents Posted on Wisconsin Assembly Election Review’s Website Further Expose Inquiry’s Partisan Leanings*, *supra* n.173 (and links to documents: <https://www.wielectionreview.org/Content/files/JayStonesHoursFrom2162022.pdf>; <https://www.wielectionreview.org/Content/files/MarchandAprilOFCFinalReim.pdf>).

¹⁷⁹ *Stone v. Wolfe*, WEC Case No. EL 21-39 (Compl. filed Oct. 19, 2021; Dec. Ltr. Feb. 4, 2022); , <https://elections.wi.gov/resources/complaints/el-21-39-stone-v-wolfe>.

Wis. Stat. § 5.06, that appears to remain unresolved.¹⁸⁰ Stone’s sworn complaints largely overlapped and repeated the disproven canard that only certain cities receive grant funding in the 2020 General Election.¹⁸¹ After his tenure at the OSC, Stone went on to file two lawsuits against the Wisconsin Elections Commission.¹⁸² Stone also communicated with Gableman’s office outside the timeframe of his official employment.¹⁸³

Ron Heuer, who worked for Gableman as an investigator, is president of the Wisconsin Voters Alliance, a fringe group that brought several unsuccessful legal challenges seeking to overturn the results of the 2020 Election.¹⁸⁴ Kaardal frequently represented Heuer and his group, including in *Wisconsin Voters Alliance v. Pence*, which resulted in Kaardal’s referral for professional discipline. 1:20-cv-03791-JEB, 2021 WL 686359 (D.D.C. Feb. 19, 2021). In that case, Heuer declared under penalty

¹⁸⁰ *Stone v. Judnic*, WEC Case No. EL 21-41 (filed Nov. 1, 2021), <https://elections.wi.gov/resources/complaints/el-21-41-stone-v-judnic-et-al>.

¹⁸¹ *Stone v. Wolfe*, WEC Case No. EL 21-39 (Compl., pp. 11–13 (Nov. 1, 2021)), [https://elections.wi.gov/sites/default/files/legacy/2021-10/Complaint Stone%2520v.%2520Wolfe.pdf](https://elections.wi.gov/sites/default/files/legacy/2021-10/Complaint%20Stone%2520v.%2520Wolfe.pdf).

¹⁸² *Stone vs. Wis. Elections Comm’n*, Kenosha Cnty. Cir. Ct. Case No. 2022CV958 (filed Sept. 14, 2022); *Stone vs. Wis. Elections Comm’n*, Kenosha Cnty. Cir. Ct. Case No. 2022CV1077 (filed Oct. 18, 2022). In addition to appearing *pro se* in these cases, Mr. Stone also claimed, for a time, to be appearing on behalf of several other individuals and one organization. This conduct included signing documents on behalf of these parties. Per the Wisconsin Circuit Court Access Program, it appears these additional parties have now withdrawn from the litigation.

¹⁸³ *American Oversight v. Office of Special Counsel*, Dane Cnty. Cir. Ct. Case No. 2021CV3007 (Dkt. 142, Records from OSC, p. 10 (Jan. 31, 2022)) [App’x 000393]; *Id.* (Dkt. 147, Supp. Records, pp. 1, 5–7 (Jan. 31, 2022)) [App’x 000394-000397].

¹⁸⁴ Bayatpour, *Gableman investigator’s group previously sued to void 2020 election results*, *supra* n.56.

of perjury that he, through the Wisconsin Voters Alliance, had demanded the Legislature meet to certify Presidential Electors, that the Electoral Count Act was unconstitutional, and that the duly appointed Presidential electors could not be counted absent certification of the Legislature, regardless of state and federal law.¹⁸⁵

Harry Wait is perhaps the most troubling of these characters: an election-conspiracy theorist who has repeatedly challenged Wisconsin's election laws and administration system. Even more to the point, he is alleged to have committed felony voter fraud against Speaker Vos, who hired Gableman as Special Counsel and might be considered to have been Gableman's client.¹⁸⁶ Although records do not indicate that Wait worked directly for Gableman, they do reveal that the two men communicated about Gableman's work.¹⁸⁷

Gableman regularly held himself out as acting on behalf the State, a public entity, or the public itself. He nonetheless staffed his office with and relied on the assistance of fringe actors and conspiracy theorists who were, in litigation and in

¹⁸⁵ *Wisconsin Voters Alliance v. Pence*, 1:20-cv-03791-JEB (D.D.C. Feb. 19, 2021) (Dec. of Ronald H. Heuer (Dec. 13, 2021)) [App'x 000398-000399].

¹⁸⁶ Shawn Johnson, *Racine County man charged with felonies, election fraud for ordering absentee ballots for other voters*, WPR (Sept. 1, 2022), <https://www.wpr.org/racine-county-man-charged-felonies-election-fraud-ordering-absentee-ballots-other-voters>.

¹⁸⁷ *In the Documents: The Thomas More Society and Other Outside Groups' Influence on Partisan Wisconsin Election Investigation*, American Oversight (Sept. 2, 2022), <https://www.americanoversight.org/in-the-documents-the-thomas-more-society-and-other-outside-groups-influence-on-partisan-wisconsin-election-investigation>.

other ways, adverse to the interests of Wisconsin and successful election administration. Rather than distance himself from such characters, Gableman opted to incorporate their conflicts into his office.

C. The Office of Special Counsel shared office space and a muddy relationship with Erick Kaardal and the Thomas More Society.

Gableman subleased space in his Brookfield offices to the Michigan-based non-profit Thomas More Society and the Minnesota-based private, for-profit law firm, Mohrman, Kaardal, and Erickson.¹⁸⁸ Office-share agreements between attorneys who do not practice together are permitted, but within strict limits. Great care must be taken to ensure client confidentiality, *see* SCR 20:1.6, and not to mislead the public.¹⁸⁹

Kaardal, a partner at Mohrman, Kaardal, and Erickson, apparently conducted a significant amount of work on Gableman's behalf, despite the apparent lack of any written contract with either OSC or the Assembly. At times Kaardal acted as if he were operating in partnership with OSC. Kaardal's associate, Nicholas Morgan, was apparently instrumental in drafting subpoenas and attempted to conduct a quai-deposition on Gableman's behalf, and Kaardal and Morgan both reviewed and organized

¹⁸⁸ Matt Mencarini, 'Blurring of lines': Private lawyer plays starring role in taxpayer-funded Wisconsin election probe, Wis. Watch (Apr. 23, 2022), <https://wisconsinwatch.org/2022/04/private-lawyer-plays-starring-role-in-taxpayer-funded-wisconsin-election-probe/>; Wisconsin Assembly Records of Gableman Investigation Costs and Contracts, *supra* n.177, p. 72 (office lease and subleases) [App'x 000392].

¹⁸⁹ *See Wisconsin Formal Ethics Opinion E-00-02: Sharing Office Space with Unrelated Entities*, <https://www.wisbar.org/formembers/ethics/Ethics%20Opinions/E-00-02.pdf>.

documents for Gableman.¹⁹⁰ It is unclear if Kaardal conducted this work as an employee or contractor of the OSC, as a partner in his own law firm, or as a special counsel to the Thomas More Society (a role he sometimes played in other contexts, see section IV.E *infra*). Lawyers may represent themselves as partners only if they actually are, and there is no record of a formal partnership or agreement between Kaardal in any capacity and Gableman (or Consultare). If no such agreement existed, Kaardal representing himself as an extension of OSC violated SCR 20:7.5.

Moreover, if Gableman was sharing confidential client information with Kaardal despite a lack of a co-counsel relationship, he also violated SCR 20:1.6 absent informed consent of Gableman’s client. If, on the other hand, Kaardal was somehow working for or with Gableman, then Gableman again misled his the Legislature—potentially his client—and the public when he claimed to divulge the identities of OSC’s staff on December 1, 2021.¹⁹¹ This is all the more complicated because of the (at least) three different capacities in which Kaardal may have been involved with the Office of Special Counsel. With so many entities and individuals potentially sharing office

¹⁹⁰ *American Oversight v. Office of Special Counsel*, Dane Cnty. Cir. Ct. Case No. 2021CV3007 (Dkt. 142, Records from OSC, p. 8) [App’x 000263]; *American Oversight v. Office of Special Counsel*, Dane Cnty. Cir. Ct. Case No. 2021CV3007 (Dkt. 144, Records from OSC, pp. 17–18 (Jan. 31, 2022)) [App’x 000400–000401]; *Wisconsin Voters Alliance v. City of Racine*, Racine Cnty. Cir. Ct. Case No. 2021CV1231 (Dkt. 33, Niemierowicz Aff., ¶¶5–8 (Mar. 11, 2022)) (“At the direction of Special Counsel Judge Mike Gableman, once the flash drive was in my possession I shared it with Nick Morgan and Erick Kaardal, attorneys for the Thomas More Society” “They assisted the Special Counsel with sorting and reviewing the documents for increasing the ease of finding key documents [sic] for the Special Counsel investigation.”). [App’x 000403–000404.] We also note that Gableman permitted Niemierowicz to improperly refer to Gableman as “judge.” *Id.*

¹⁹¹ See Hess, *Michael Gableman reveals staffers in GOP-backed election investigation*, *supra* n.86; *Hearing*, Assembly Committee on Campaigns and Elections (Mar. 1, 2022), *supra* n.96, beginning at 27:25.

space, Gableman and his team needed to take special care to ensure they did not divulge confidential information improperly or mislead the public about the nature of their work and the entities' relationship.

Kaardal is separately accountable for any professional misconduct he may have committed. Gableman, however, is responsible for the conduct of his office, for maintaining the confidences of his clients, and for accurately representing who did, and did not, work for him. He failed in those basic obligations.

D. Gableman's team appears to have discriminated against and harassed nursing home residents.

On March 1, Gableman publicly shared multiple videos of Kaardal “interviewing” residents of nursing homes.¹⁹² He presented the footage as evidence that some nursing home residents had voted despite allegedly being mentally unfit and legally unable to do so. As an initial matter, this footage does not prove what Gableman asserts. Under Wisconsin law, only a judge—not a private lawyer, a caretaker, a family member, or a lawyer working in concert with a caretaker or family member—can declare someone unfit to vote in Wisconsin. *See Wis. Stat. § 6.03(3)*. A finding of unfitness to vote depends upon, and cannot be entered without, an evidentiary hearing; there is no other test of competence or understanding that election officials, or certainly non-governmental attorneys, may administer. *Id.* The video nonetheless shows Kaardal, who was either an employee or otherwise a functionary of Gableman's office,

¹⁹² *See Mencarini, 'Blurring of lines', supra n.188.*

grilling elderly citizens with questions designed to lead the viewer to be skeptical of the subjects' right to vote.

Kaardal's conduct towards the nursing home residents and Gableman's choice to play the footage as part of his public testimony before the Committee both appear to violate several rules of professional conduct. Because we know only what can be gleaned from the videos and their public presentation, we cannot be certain of the contours of the OSC's interactions with the videos' subjects—which speaks to the need for an OLR investigation into the matter—but the information we do have strongly suggests ethical violations.

Gableman had special responsibilities of candor towards these unrepresented individuals. None of the interviewees appeared to be represented by counsel. Yet there is no indication that Gableman or Kaardal fully explained to the interviewees the purpose of the interviews or the use to which they would be put, which would violate the requirement that: "In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall inform such person of the lawyer's role in the matter." SCR 20:4.3(a). Further, to the extent the interviewees were confused about what was going on and Kaardal's role, he had an affirmative duty to clear that up: "When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding." *Id.* The footage does not show Kaardal making any "reasonable efforts" to help the residents understand what was happening. In fact, it remains unclear what role Kaardal had in this process.

In addition, it is professional misconduct for a lawyer to “harass a person on the basis of sex, race, *age*, creed, religion, color, national origin, *disability*, sexual preference or marital status in connection with the lawyer’s professional activities.” SCR 20:8.4(i) (emphases added). It appears that Gableman targeted residents of nursing homes and assumed, based on their age and/or disability status, that they were incompetent to vote, then set up interviews to ask questions designed to suggest the voters’ incompetence. The alternative is that Gableman and Kaardal acted upon tips about potentially infirm voters, possibly from family members or caretakers, and then conducted these interviews without considering the context of the relationship they were meddling in, evaluating the potentially competing interests at stake, or disclosing to the interviewees any of this context. The conduct of Gableman and anyone else from or affiliated with OSC involved in the production or dissemination of this video should be investigated as possible harassment based on protected characteristics.

E. Gableman misused client (and taxpayer) funds.

Wisconsin attorneys are prohibited from charging or collecting unreasonable fees or expenses. SCR 20:1.5. Gableman wasted time on preliminaries rather than doing the work for which he was hired; spent time and funds on explicitly political activities unrelated to his assigned function; and paid for an out-of-state lawyer’s application for admission to the Wisconsin bar. These misuses of funds violated the rule against charging or collecting unreasonable fees and expenses, because it is never reasonable to charge a client for activities unrelated to that client’s representation.

1. *Wasting time.*

As described in section I of the Background, Gableman stated that he spent July and August of 2021 at the New Berlin Public Library, getting up to speed on Wisconsin election laws and planning his investigation, all the while collecting \$11,000 a month.¹⁹³ There is no record of the fruits of this labor,¹⁹⁴ nor is \$22,000 a reasonable fee to charge for acquiring the basic background knowledge needed to perform the services for which an attorney has been hired.

Unreasonable as this use of funds in July and August is on its face, it is not the whole picture. Gableman has further explained that he in fact spent one week of July on vacation, and the rest of the month looking for office space, though other records show that he had acquired office space in Brookfield by mid-July.¹⁹⁵ And he visited Arizona and the MyPillow symposium during that time.

2. *Spending time and funds on explicitly political activities unrelated to assigned work.*

During the summer months when he was allegedly researching Wisconsin election law, Gableman also found time to attend a symposium in South Dakota hosted

¹⁹³ Gableman Aff., ¶3 [App'x 000026].

¹⁹⁴ June 23, 2022 Hearing Tr. 22:6–11 [App'x 000036].

¹⁹⁵ *Id.* 59:2–5 (“I had a previously planned vacation the first week of July, family vacation; and then for the remainder of July, I’m trying to find office space.”) [App'x 000044]. As the Court noted immediately after this testimony, even this could not be true, because Gableman had secured office space in mid-July. *Id.* 59:6–10. Gableman testified he was diagnosed with COVID-19 on August 13 and spent two weeks in bed. Of course, falling ill alone should not be considered a violation of the Rule, although it may compel withdrawal under certain circumstances. SCR 20:1.16(a)(2). Rather, this timeline makes clear that Gableman did almost nothing to make himself competent in election law.

by election-conspiracy theorist Mike Lindell, and to travel to Arizona to watch a review of ballots in Maricopa County.¹⁹⁶ The South Dakota symposium was reportedly “being ridiculed by cybersecurity experts” and could not have been materially helpful to any competent review of Wisconsin’s elections.¹⁹⁷ The review of Arizona’s election results was conducted by a now-defunct firm called Cyber Ninjas that was similarly discredited at the time and has fallen into even more complete disrepute since.¹⁹⁸ Nevertheless, Gableman billed the Wisconsin State Assembly for his trips to both Arizona and South Dakota, and taxpayers covered those costs.¹⁹⁹ Indeed, it was not just Gableman who went to Arizona on the taxpayers’ dime—four other individuals accompanied him, and the group spent up to five nights in hotels.²⁰⁰ Gableman also spent taxpayer money to travel to a Republican Party event in March of 2022.²⁰¹

¹⁹⁶ Patrick Marley and Molly Beck, *Official in charge of Wisconsin’s election review attends conspiracy-fueled symposium hosted by MyPillow’s Mike Lindell*, Milwaukee Journal Sentinel (Aug. 12, 2021, last updated Jan. 6, 2022), <https://www.jsonline.com/story/news/politics/2021/08/12/wisconsin-election-official-attends-mike-lindell-cyber-symposium/8108850002/>.

¹⁹⁷ *Id.* For more on Mr. Lindell’s election conspiracy theories, see Tolan, Devine, and Griffin, *MyPillow magnate Mike Lindell’s latest election conspiracy theory is his most bizarre yet*, *supra* n.13.

¹⁹⁸ See, e.g., Wines, *Cyber Ninjas, Derided for Arizona Vote Review, Says It Is Shutting Down*, *supra* n.14; Nicholas Riccardi, *Experts or ‘grifters’? Little-known firm runs Arizona audit*, Associated Press (May 23, 2021), <https://apnews.com/article/donald-trump-arizona-business-technology-election-recounts-c5948f1d2ecdff9e93d4aa27ba0c1315>.

¹⁹⁹ Marley, *Taxpayers bankrolled Michael Gablemans Arizona trip after Vos said they wouldn’t have to cover those costs*, *supra* n.14.

²⁰⁰ American Oversight, *Expense Records Reveal New Details about Wisconsin’s Partisan Election Investigation*, American Oversight (Nov. 21, 2021), <https://www.americanoversight.org/expense-records-reveal-new-details-about-wisconsins-partisan-election-investigation>.

²⁰¹ Patrick Marley, *Taxpayers cover costs for Michael Gableman to headline Republican event*, Milwaukee Journal Sentinel (Mar. 5, 2022), <https://www.jsonline.com/story/news/politics/2022/03/05/taxpayers-cover-costs-michael-gableman-address-republican-event/9389857002/>.

Although Speaker Vos initially said he would claw those funds back, he later changed his mind and reportedly permitted the reimbursements to stand.²⁰² Given the confusion about the identity of Gableman’s client, and the fact that taxpayers were ultimately responsible for these expenses, Speaker Vos’s acquiescence does not necessarily make these expenditures reasonable, much less make Gableman’s submission of them for reimbursement ethically sound.

3. *Spending funds on unreasonable costs related to legal staff/contractors.*

Gableman also used taxpayer dollars to pay for Kloster’s application for admission to the State Bar of Wisconsin.²⁰³ This expense benefits an attorney far beyond any individual case (or short-term investigation) and is therefore not generally charged to any individual client. The OSC was a short-term enterprise, not expected to be engaged in long-term representation that would have required Kloster to become licensed in the state (not to mention the availability of Wisconsin attorneys to do the same work). For all of these reasons, charging this expense to Wisconsin taxpayers was not reasonable.

Considering OSC’s incompetence as detailed in Section I, it was unreasonable for Gableman to spend taxpayer funds on multiple out-of-state attorneys’ fees and costs, period. It is not inherently unreasonable for the Assembly to appoint a Special

²⁰² Marley, *Michael Gableman to receive \$5,500 a month even as work on Wisconsin’s Republican-led election review is paused*, *supra* n.14.

²⁰³ American Oversight, *Wisconsin State Assembly Records of Office of Special Counsel Expenses* (Mar. 4, 2022), <https://www.americanoversight.org/document/wisconsin-state-assembly-records-of-specific-assembly-members-documents-regarding-contracts-with-entities-investigating-the-2020-election> (excerpted) [App’x 000406].

Counsel who is not yet a subject matter expert, or for that Special Counsel to hire additional counsel who are not yet subject matter experts, so long as all the attorneys involved promptly educate themselves and provide competent legal services. But Gableman did no such thing. He persisted in promoting unlawful ideas and theories, and he hired attorneys from other states who had little to no knowledge of Wisconsin's election laws and who failed to acquire that knowledge or provide anything of value to Wisconsin's Assembly or taxpayers. Having hired out-of-state attorneys, he also charged taxpayers thousands of dollars for their flights, hotel stays, and other expenses when they visited Wisconsin.²⁰⁴ These costs would have been entirely unnecessary or significantly lower for Wisconsin-based attorneys, and even for competent out-of-state counsel they would have been questionable, given the availability of remote-work options that legal professionals and courts have had to learn to use since 2020.

Just as unreasonably, Gableman paid (or caused the Assembly to pay) Indiana Attorney James Bopp's legal fees at a rate of \$450 per hour.²⁰⁵ The going rate for private attorneys performing work for the state government is \$275 per hour.²⁰⁶ The records produced to American Oversight do not explain why Bopp's work merited

²⁰⁴ See, e.g., *Expense Records Reveal*, supra n.200; American Oversight, *Wisconsin Assembly Records of Gableman Investigation Costs and Contracts*, supra n.177, pp. 36–47 (Nov. 19, 2021)) [App'x 0000407–000419].

²⁰⁵ Agreement for Legal Services (Nov. 17, 2021) [App'x 000371–000373].

²⁰⁶ See *Special Counsel Legal Contract #2019-04* (Feb. 7, 2019), <https://www.wispolitics.com/wp-content/uploads/2019/02/190208PinesBachEvers.pdf>; *Special Counsel Contract #2020-12* (May 11, 2020) [App'x 000420–000423].

such a high fee. On the contrary, the papers filed on behalf of OSC were of such poor caliber and marked by so much unneeded delay, as detailed elsewhere in this memorandum, that the idea of paying any attorney \$450 per hour for the workproduct produced is patently unreasonable.²⁰⁷

F. Gableman operated a law firm through an unregistered LLC.

Gableman's contract with the Assembly ran through Consultare, LLC. Gableman never demonstrated that Consultare, LLC could act as Special Counsel to the Assembly or the Committee. Supreme Court Rule 20:5.7 contains requirements for the practice of law by an LLC, including that it complete an annual registration and pay a filing fee with the State Bar. SCR 20:5.7(b). As Consultare, LLC's sole member, and as the Special Counsel who routed his contract with the Assembly through Consultare, LLC, Gableman bears full responsibility for these failures.

On December 21, 2022, Attorney Daniel S. Lenz contacted the Wisconsin State Bar to inquire as to the registration status of Consultare. A representative indicated that it did not appear in a search of companies registered to practice law.²⁰⁸

²⁰⁷ *American Oversight v. Office of Special Counsel*, Dane Cnty. Cir. Ct. Case No. 2021CV3007 (Dkt. 423, Supplement to Dec., pp. 42–43, 59 (Aug. 17, 2022)) (excerpted) [App'x 000424–000427].

²⁰⁸ Second Lenz Aff. (Feb. 27, 2023) [App'x 000428].

VI. Gableman’s actions evince multiple violations of his oath as a Wisconsin attorney.

In public statements and in litigation, Gableman has repeatedly violated his Attorney’s Oath, as set forth in Supreme Court Rule 40.15. It is professional misconduct for a lawyer to violate the oath. SCR 20:8.4(g). We reproduce the oath in full in the section below, annotated with Gableman’s apparent transgressions.

“I will support the constitution of the United States and the constitution of the state of Wisconsin;”

Gableman’s efforts to cast doubt on the results of the 2020 presidential election, and to undermine election administration in Wisconsin, illustrate his antipathy to our constitutional order. Already in November 2020, Gableman had baselessly questioned the results of the 2020 election. It is thus no surprise that, after he became Special Counsel, Gableman’s destructive efforts persisted through both cases in which we participated as counsel (and through others). Without evidence, Gableman made numerous public statements alleging voter fraud and calling for the results to be “decertified,” an impossibility under our statutes and constitutions.²⁰⁹ Citizens, including lawyers, who wish to uphold the constitutional republic we share must abide by the results of free and fair elections. Gableman failed to do this elemental thing.

²⁰⁹ *Second Interim Investigative Report on the Apparatus & Procedures of the Wisconsin Elections System*, *supra* n.34, pp. 81–95, 131–36. In addition to recommending the Legislature consider decertifying the election results in his written report, Gableman advocated the same during his testimony to the Assembly Committee on Campaigns and Elections. Shawn Johnson, *Gableman report calls for decertifying 2020 election. The Legislature’s nonpartisan lawyers say that’s not possible*, *supra* n.35.

Perhaps even more concerning, Gableman recently publicly called for violent revolution against our system of government. Although we were no longer actively litigating against Gableman at the time of these comments, they appear to reflect Gableman's dissatisfaction with the outcome of his tenure as Special Counsel and the results of the 2020 election. At an event with the Republican Party of Outagamie County on September 9, 2022, Gableman reportedly suggested that an armed revolution is necessary to correct our nation's path:

Our comfort is holding us back from taking the action that is necessary. The greatest challenge of our poor in this country is not lack of food, it's obesity. It's a beautiful world. But it's that very comfort that is keeping us from what our founders knew to be the only way to keep an honest government, which is revolution. Thomas Jefferson said that the tree of liberty must be watered by the blood of revolution in every generation. I don't think that's going to happen.²¹⁰

Notwithstanding the revolutionary generation's rhetoric (which Gableman misquoted), our constitutional order both provides for and depends upon a peaceful civil society in which citizens resolve disagreements through the free exchange of ideas, the political process, and the courts. The U.S. Constitution condemns the sort of violent insurrection that Gableman encouraged. U.S. Const. amend. XIV § 3 ("No person shall ... hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath ... to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof.").

²¹⁰ Molly Beck, *Michael Gableman, who produced no evidence of 2020 election fraud in \$1 million review, now suggests the country needs revolution*, Milwaukee Journal Sentinel (Sept. 19, 2022), <https://www.jsonline.com/story/news/2022/09/19/former-wisconsin-supreme-court-justice-michael-gableman-calls-revolution/10386928002/>.

“I will maintain the respect due to courts of justice and judicial officers;”

Gableman has repeatedly behaved disrespectfully towards courts of justice and judicial officers. There is nothing wrong with spirited advocacy in court or good-faith, honest criticism of courts’ processes and decisions, but Gableman’s words and actions went far beyond the pale.

His most egregious offenses are already before the Office of Lawyer Regulation by referral from Judge Remington. Gableman also falsely complained on conservative talk radio that Judge Ramirez and Judge Lanford, who presided over *Gableman v. Genrich* and *Wisconsin Elections Commission v. Wisconsin State Assembly*, respectively, were unnecessarily and inappropriately delaying his progress.²¹¹ These comments came shortly after Gableman told far-right activist Steve Bannon on his podcast: “The judges in our state have been co-opted. They are afraid of the press. They are afraid of the criticism they know they will get if they force these people to answer questions.”²¹² Such comments do not express due respect toward the courts. The Supreme Court has upheld sanctions on an attorney who asserted, during a judicial campaign no less, that “judges are permitted to get away with falsifying the record” on the grounds that this comment “reflects outspoken contempt for the entire court system.” *In re Disciplinary Proceedings Against Sommers*, 2014 WI 103, ¶29–30, 358

²¹¹ Marley, *Gableman accuses two judges of dragging out cases over the Republican election review*, *supra* n.116.

²¹² *Id.*

Wis. 2d 248, 851 N.W.2d 458 (per curiam).²¹³ There is no daylight between this statement and Gableman’s claim that Wisconsin’s courts are “co-opted” and “afraid of the press.”²¹⁴ Both reflect “outspoken contempt for the entire court system” and both are punishable under the Rules. Our Supreme Court’s description of another attorney who ultimately suffered a temporary revocation of his law license is equally apt for Gableman:

As aggravating factors the referee listed the following: Attorney Pangman’s total lack of respect for the judicial system, for which he has shown *outspoken contempt*; his *reckless disregard for the truth*; his deliberate refusal to abide by any general rules of fair play or specific rules governing the legal system if he determines it to be to his benefit to do so; his *repeatedly demonstrated lack of concern for the rights and reputations of others* and the obligations imposed upon him as a licensed member of the legal profession; his *grandiose vision of himself*; his *inability to admit that what he is doing or saying is wrong or inappropriate, regardless of the evidence*.

In re Matter of Disciplinary Proceedings Against Pangman, 216 Wis. 2d 440, 451–52, 574 N.W.2d 232 (1998) (per curiam) (emphases added).

“I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, or any defense, except such as I believe to be honestly debatable under the law of the land;”

²¹³ At the time of this decision, Gableman was a Justice on the Wisconsin Supreme Court.

²¹⁴ The First Amendment to the United States Constitution protects attorneys’ right to free speech, but not beyond accountability to the Oath and the Professional Rules. In the *Sommers* case, the Court acknowledged its duty to “limit the scope and application of the Attorney’s Oath so that it does not reach a substantial amount of constitutionally protected conduct or significantly inhibit an attorney’s exercise of the right of free speech,” particularly in the context of a judicial election campaign. 2014 WI 103, ¶28. Nevertheless, the Court concluded that the “outspoken contempt” of the attorney towards the judicial system, coupled with his defaulting on the disciplinary proceedings, warranted sanctions. *See also State v. Eisenberg*, 48 Wis. 2d 364, 380, 180 N.W.2d 529 (1970) (“The defendants’ third defense—that sec. 256.29, Stats., is vague and over-broad so as to violate rights under the First and Fourteenth amendments to the United States Constitution—is without merit and cannot be sustained.”).

Gableman’s lack of competence (see Section I, *supra*) casts doubt on his ability to determine whether the litigation, the subpoena procedure, and the public claims he instituted or counseled while leading the Office of Special Counsel could be just, unjust, or honestly debatable. Even after responses that demonstrated his positions were bereft of any factual or legal support, Gableman persisted in pressing those positions.

“I will employ, for the purpose of maintaining the causes confided to me, such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;”

As discussed in Section II, *supra*, Gableman repeatedly sought to mislead judges with false statements of fact and law.

“I will maintain the confidence and preserve inviolate the secrets of my client and will accept no compensation in connection with my client’s business except from my client or with my client’s knowledge and approval;”

It is difficult to evaluate Gableman’s adherence to this part of the oath because of the muddiness around the identity of his client (see Section II, *supra*). Was his client the Wisconsin Assembly? Speaker Vos, personally? The people of the State of Wisconsin? What did Speaker Vos and the Assembly know about OSC renting office space to (and thereby sharing it with) both Erick Kaardal’s for-profit law firm and the non-profit Thomas More Society (discussed in section IV, *infra*), and any other assistance, financial or otherwise, Gableman’s office may have received from outside

entities? What about Gableman’s collaborations with Harry Wait and Ron Heuer,²¹⁵ both frequent antagonists of the state, who may have gained access to privileged information through their work with the OSC? These questions all warrant investigation by the Office of Lawyer Regulation.

“I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;”

Gableman’s public conduct was frequently offensive. His blatantly sexist in-court behavior towards a female attorney is already before the Office of Lawyer Regulation by referral from Judge Remington.²¹⁶ That outburst was part of a pattern of sexist, ablist, ageist, dishonest, and simply cruel speech and behavior that together violate the oath’s prohibition against offensive personality. Similarly, in April 2022, while both *Gableman v. Genrich* and *Wisconsin Elections Commission v. Wisconsin Assembly* were pending, Gableman appeared on a radio program where he made gratuitous, disrespectful comments about the physical appearance of WEC Administrator Meagan Wolfe. At that time, Administrator Wolfe was not only Wisconsin’s chief election officer, Wis. Stat. § 5.05(3g), but also a named plaintiff in *Wisconsin Elections*

²¹⁵ Heuer is president of the Wisconsin Voters Alliance, a fringe group that brought several unsuccessful legal challenges seeking to overturn the results of the 2020 Election. Bayatpour, *Gableman investigator’s group previously sued to void 2020 election results*, *supra* n.56. Kaardal frequently represented Heuer and his group, including in *Wisconsin Voters Alliance v. Pence*, which resulted in Kaardal’s referral for professional discipline. 1:20-cv-03791-JEB, 2021 WL 686359 (D.D.C. Feb. 19, 2021).

²¹⁶ Molly Beck, *Former Supreme Court Justice Michael Gableman should face discipline after ‘misogynistic’ comments, judge orders*, Milwaukee Journal Sentinel (last updated June 16, 2022), <https://www.jsonline.com/story/news/politics/2022/06/15/gablemans-misogynistic-comments-should-penalized-judge-says/7635525001/>.

Commission v. Wisconsin Assembly and a potentially relevant witness in *Gableman v. Genrich*. When a conservative talk show host mentioned having seen Administrator Wolfe, Gableman said, “Black dress, white pearls—I’ve seen the act, I’ve seen the show,” and went on to compare Administrator Wolfe to Hillary Clinton.²¹⁷ By implying that Administrator Wolfe was somehow performing an act rather than carrying out her professional duties, and by speaking scornfully of her appearance at all, Gableman engaged in sexist bullying with no conceivable possible benefit to his client (however understood). His remarks also constituted harassment of Administrator Wolfe based on her sex, which separately constitutes professional misconduct under SCR 20:8.4(i). Gableman’s use of edited videos to suggest that elderly and/or disabled nursing home residents were not qualified to vote had a similar harassing, discriminatory tone and should be seen as part of the pattern of Gableman’s offensive personality.

In August 2022, Gableman endorsed Robin Vos’s primary opponent Adam Steen and, in the process, publicly insulted Vos, who was then possibly his client and certainly a party to two cases in Dane County Circuit Court in which Gableman and his office were involved.²¹⁸ In doing so, he went out of his way to insinuate that Vos was dishonest, in direct violation of the oath. In an ad Gableman recorded for Steen,

²¹⁷ Patrick Marley, *Michael Gableman, leader of the GOP’s review of the 2020 vote, disparages state’s election director for how she dresses*, Milwaukee Journal Sentinel (Apr. 13, 2022), <https://www.jsonline.com/story/news/politics/2022/04/13/michael-gableman-disparages-elections-director-how-she-dresses/7296786001/>.

²¹⁸ *American Oversight v. Office of Special Counsel*, Dane Cnty. Cir. Ct. Case No. 2021CV3007; *Wisconsin Elections Comm’n. v. Wis. Assembly*, Dane Cnty. Cir. Ct. Case No. 2021CV2552.

Gableman said: “You know, Robin Vos never wanted a real investigation into the 2020 election in Wisconsin. And everything that my office and I have been able to do to expose all the corruption that took place has been in spite of Robin and not because of him.”²¹⁹ These comments might seem commonplace in a political context, but Gableman made them while working as an attorney on an investigation that Vos himself had ordered and was authorizing payment for.

Gableman’s dishonest actions in filing his Petition for Writ of Attachment against Mayor Genrich (see Section II, *supra*) were further examples of offensive behavior. Through his inflammatory public statements to the Assembly committee, Gableman created scandal out of thin air and wrought unquantifiable harm to Mayor Genrich’s reputation.

Out-of-court comments and behavior can be “offensive personality.” *Sommers*, 2014 WI 103, ¶27 (per curiam) (“a lawyer may violate the Attorney’s Oath by conduct that occurs out of court as well as by in-court conduct”)²²⁰; *In re Disciplinary Proceedings Against Johann*, 216 Wis. 2d 118, 121, 574 N.W.2d 218 (1998) (per curiam) (attorney who distributed flyer in her community insulting her child’s father and his wife in an effort to reduce their income engaged in offensive conduct). And Gableman’s insulting remarks cannot possibly be construed as part of his zealous representation of his client. *Cf. In re Disciplinary Proceedings Against Williams*, 2005 WI

²¹⁹ Molly Beck, *Robin Vos gave Michael Gableman \$11,000 a month to review the 2020 election.*, *supra* n.164.

²²⁰ At the time of this decision, Gableman was a Justice on the Wisconsin Supreme Court.

15, ¶24, 278 Wis. 2d 237, 692 N.W.2d 633 (per curiam) (attorney who published several letters to the editor in his local newspaper did not engage in offensive conduct, despite at-times harsh tone, giving “particular weight” to referee’s finding that the attorney was primarily “motivated by the desire to protect his client”).

“I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any person’s cause for lucre or malice.”

Gableman’s constant delays, compounded by his initial foot-dragging and use of out-of-state counsel at taxpayer expense, all while he continued to receive a publicly funded salary, indicate that Gableman may have been motivated by self-interest. Gableman’s original contract contemplated that his work would be done by October 31, 2021, which would have given his purported client, the Assembly, time to consider any legislative recommendations before the end of the session. Instead, he managed to delay any such recommendations to March, at which point the Assembly had already finished its business for the session, including the disposition of several election-related bills.²²¹ Based largely on his own incompetence, Gableman managed to eke out several more months of public salary until he was fired in August.

Many of Gableman’s actions are difficult to interpret except as attempts to delay a person’s cause for malice (see Section III, *supra*). By requesting multiple extensions and continuances, he dragged out the open-records proceedings initiated by

²²¹ Assembly Journal for February 24, 2022, <https://docs.legis.wisconsin.gov/2021/related/journals/assembly/20220224>.

American Oversight and the suit filed by WEC to stop him demanding private testimony. Although it is impossible to see inside another person's mind, Gableman was vocal and public about his views on the 2020 election. Beginning immediately after the election and continuing through to the present day, Gableman has embraced conspiracy theories, spread lies, rejected facts, impugned the character of people he perceives to be his adversaries, and abused the legal process. These antics garnered praise and attention from national figures including former President Trump, media figure Tucker Carlson, and Steve Bannon.²²² Although we have argued that much of his work reflected a deep and abiding incompetence, it is equally apparent that this incompetence was exacerbated by malice, which should never drive the actions of any Wisconsin attorney, let alone one hired to serve the interests of people of this state.

The attorney's oath is a poignant reminder of the obligations and expectations of an attorney. As a judge or justice, Gableman may well have administered this oath. As an attorney, he was bound to it. It is therefore remarkable that, in the course of only a year, he managed to violate its every tenet.

²²² A.J. Bayatpour, *Trump touts Michels and Gableman in rally ahead of primary, slams Kleefisch and Vos*, WKOW (Aug. 6, 2022), https://www.wkow.com/news/trump-touts-michels-and-gableman-in-rally-ahead-of-primary-slams-kleefisch-and-vos/article_e4e1ddac-1555-11ed-ad1b-7b6a7118f3e5.html; Adam Rogan, *Michael Gableman was on Tucker Carlson's show Monday night and 2020 election inaccuracies ensued*, LaCrosse Tribune (Mar. 8, 2022), https://lacrossetribune.com/news/state-and-regional/michael-gableman-was-on-tucker-carlsons-show-monday-night-and-2020-election-inaccuracies-ensued/article_da7ad515-66d6-59d1-8113-4ba427200fde.html; Molly Beck, *On Steve Bannon podcast, Michael Gableman appeals to Trump supporters for help*, *supra* n.163.

CONCLUSION

Assembly Resolution 15, which authorized the Committee’s “investigation,” contains some accurate observations:

Whereas, the ability of American citizens to exercise their right to vote is foundational to our representative democracy; and

Whereas, the legitimacy of the American form of government depends on the citizens’ widespread confidence in the fairness of elections and acceptance of election results; and

Whereas, preserving the integrity of the electoral process is one of our government’s most important responsibilities[.]²²³

If the Assembly and its leadership believed what they said, then Gableman was plainly an inappropriate choice. Before he was retained, Gableman had already stated, falsely, that the November 2020 election was “stolen.”²²⁴ Throughout the course of his investigation, Gableman ran roughshod over the law, the facts, and the core democratic principles that bind our state and nation together. Instead, he sowed discord and distrust in the electoral process, amplifying the lies and conspiracy theories that have done so much damage in the last two years.

History and the political process will have to judge Gableman and the Assembly’s excesses. But certain conduct, described herein, falls squarely within the Supreme Court and OLR’s authority to “regulate the bench and bar.” *State v. Schwind*, 2019 WI 48, ¶16, 386 Wis. 2d 526, 926 N.W.2d 742.

²²³ Ex. B Documents, pp. 2–3 [App’x 000001–000002].

²²⁴ See Marley, *Michael Gableman said bureaucrats ‘stole our votes’ before he was put in charge of reviewing 2020 election*, *supra* n.9.

“A lawyer has a professional obligation to support the enforcement of the law and the administration of justice.” *In re Disciplinary Proceedings Against Inglimo*, 2007 WI 126, ¶51, 305 Wis. 2d 71, 740 N.W.2d 125 (per curiam). Gableman failed to live up to this fundamental obligation and, in so doing, damaged Wisconsin’s legal system and public sphere.

Following the attempts to subvert and overturn the results of the 2020 General Election, which culminated in the January 6, 2021 attack on the U.S. Capitol, legal and political systems have struggled to create accountability. For attorneys, accountability has often come in the form of professional sanction. Pursuant to SCR 20:8.4, we respectfully submit that Michael Gableman deserves no more, or less, than to be held to the same standard as other attorneys in this state, and that accountability for this conduct is required.

If we can provide any additional information to assist the Office of Lawyer Regulation in its review, or answer any questions, please do not hesitate to contact us. Daniel S. Lenz can be reached at dlenz@lawforward.org or 608-556-9120. Jeffrey A. Mandell can be reached at jmandell@staffordlaw.com or 608-210-6303.

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