Supreme Court of Wisconsin

NO. 2024AP2356-D OFFICE OF LAWYER REGULATION
v. MICHAEL J. GABLEMAN

October 23, 2025

Justice Rebecca Frank Dallet has entered the following order:

Michael J. Gableman moves for my recusal from this attorney-disciplinary action in which the Office of Lawyer Regulation alleges, and Gableman does not contest,[1] that he engaged in 10 counts of violations of the Rules of Professional Conduct for Attorneys while acting as Special Counsel to Wisconsin State Assembly in 2021 and 2022. As support, he points to statements I made about his judicial campaign and record during my campaign for Wisconsin Supreme Court more than seven years ago. Because none of these statements create a serious risk of actual bias and I can act fairly and impartially in this matter, Gableman's motion is denied.

Gableman argues that I must recuse myself pursuant to WIS. STAT. § 757.19(2)(g); SCR 60.03 and 60.05(1)(a); and/or the Due Process Clause of the 14th Amendment because I criticized his judicial campaign and record while campaigning for election to this court in 2017 and 2018. Gableman was a member of this court from 2008 and 2018, and for a period in 2017 after I first announced my campaign, I thought I might be running against him.[2] At the time, I said "I'm running for the Supreme Court because it's out of balance.

[1] Gableman entered a no-contest plea, and stipulated "that the allegations of the Complaint provide an adequate factual basis in the record for a determination of [Supreme Court Rules] violations . . . ." Based on that stipulation, the referee issued a report and recommendation concluding that the factual allegations in the complaint were sufficient to support the misconduct charges alleged by the OLR and recommending that this court suspend Gableman's license to practice law in Wisconsin for three years. What remains is for this court to review the referee's legal conclusions and determine whether the recommended sanction is appropriate.

[2] He ultimately chose not to run for reelection.

Justice Gableman is clearly part of the problem." I also criticized his 2008 campaign as "one of the most unethical in state history," and his decision not to recuse from a 2015 case in which his campaign donors and supporters were being investigated for criminal campaign-finance violations; a case in which Gableman ultimately wrote the majority opinion siding with those donors and supporters. *See generally State ex rel. Two Unnamed Petitioners v. Peterson*, 2015 WI 85, 363 Wis. 2d 1, 866 N.W.2d 165. I later described Gableman as a "rubber stamp for his political allies," and argued that my eventual opponent would behave similarly if he were elected to this court.

"'A fair trial in a fair tribunal is a basic requirement of due process.'" *Miller v. Carroll*, 2020 WI 56, ¶21, 392 Wis. 2d 49, 944 N.W.2d 542 (quoting *In re Murchison*, 349 U.S. 133, 136 (1955)). For that reason, a justice who determines that "for any reason, . . . she cannot, or it appears . . . she cannot, act in an impartial manner" must recuse herself. § 757.19(2)(g). We have repeatedly emphasized that this determination is subjective, and concerns "not what exists in the external world . . . but what exists in the judge's mind." *State v. Am. TV & Appliance of Madison, Inc.*, 151 Wis. 2d 175, 182, 443 N.W.2d 662 (1989); *see also Donohoo v. Action Wis., Inc.*, 2008 WI 110, ¶¶24, 27, 314 Wis. 2d 510, 754 N.W.2d 480; *State v. Harrell*, 199 Wis. 2d 654, 663, 546 N.W.2d 115 (1996).

Reviewing the statements I made in 2017 and 2018, Gableman's arguments, § 757.19(2)(g), and the relevant case law, I conclude that both as a matter of fact and appearance I can act impartially in this matter. The statements I made seven or eight years ago reflected my views of Gableman's judicial record and his 2008 campaign alone. I never expressed any views about Gableman's ethical standards generally, nor could I have expressed any opinion in 2017 or 2018 about his conduct as an attorney in 2021 or 2022, years after I made these statements. In short, the opinions I expressed about Gableman's judicial and campaign conduct from 2008 to 2018 say nothing about the conduct he is now accused of committing, let alone demonstrate that in either fact or appearance I cannot act impartially in this matter. Accordingly, my recusal is not required under § 757.19(2)(g).

Gableman does not develop a meaningful argument under SCR 60.03 or 60.05(1)(a), neither of which require my recusal either. These rules, which are parts of Wisconsin's Judicial Code of Conduct, respectively provide that a justice "shall avoid impropriety and the appearance of impropriety in all of [her] activities," and that a justice "shall conduct all of [her] extra-judicial activities so that they do none of the following . . . Cast reasonable doubt on the judge's capacity to act impartially as a judge." *See* SCR 60.03; 60.05(1)(a). Although a justice may be disciplined for violating these provisions, they are not independent bases for seeking recusal of a justice from a case. *See Am. TV & Appliance*, 151 Wis. 2d at 185. In any event, however, neither my statements in 2017 and 2018, nor my participation in this case would violate either provision. As I previously explained, I can in both fact and appearance act impartially in this proceeding

because none of my statements had anything to do with Gableman's conduct as an attorney years later.[3]

Gableman's last, and most developed claim is that my recusal is required under the 14th Amendment's Due Process Clause because "there is 'a serious risk of actual bias—based on objective and reasonable perceptions.'" *Miller*, 392 Wis. 2d 49, ¶24 (quoting *Caperton*, 556 U.S. at 884). This standard derives from the United States Supreme Court's decision in *Caperton*, and is met only in "exceptional case[s] with 'extreme facts . . . .'" *Miller*, 392 Wis. 2d 49, ¶24 (quoting *Caperton*, 556 U.S. at 884). There is a presumption that judges act "fairly, impartially, and without prejudice." *See id.* ¶25. Nevertheless, we found that presumption rebutted when, for example, a judge accepted a Facebook friend request from a litigant during the pendency of a case, the litigant interacted with the judge's Facebook posts frequently and also posted content of her own related to the case, and the judge failed to disclose the Facebook friendship. *Id.* And the United States Supreme Court likewise concluded that the presumption of impartiality was rebutted when a campaign donor with an interest in an impending case spent substantial sums of money to elect a justice to the court that would hear the case, and the subsequently elected justice did not recuse himself from considering that case. *See Caperton*, 556 U.S. at 873–75.

The facts here fail to establish the "serious risk of actual bias—based on objective and reasonable perceptions" necessary to require my recusal. *See Miller*, 392 Wis. 2d 49, ¶24. As I've said previously, the statements I made about Gableman's actions as a justice and candidate for election to this court between 2008 and 2018 have nothing to do with the allegations at issue in this case. Those statements did not express, and could not have expressed, any opinion on whether Gableman engaged in unethical conduct as an attorney in 2021 or 2022. Unlike in *Miller* or *Caperton*, my comments did not relate to a "pending or imminent case" that I might be required to review, let alone this case, which wasn't filed until 2024. *See Clarke v. WEC*, 2023 WI 66, ¶47, 409 Wis. 2d 249, 995

[3] Although Gableman does not cite it, SCR 60.04(4) does require a justice to recuse herself in certain enumerated situations when "reasonable, well-informed persons knowledgeable about judicial ethics standards and the justice system and aware of the facts and circumstances the judge knows or reasonably should know would reasonably question the judge's ability to be impartial." Those enumerated situations include when a justice "has a personal bias or prejudice concerning a party," or when the justice, either as a justice or candidate for judicial office, "made a public statement that commits, or appears to commit, the judge with respect to" an issue in a proceeding or the controversy in a proceeding. *See id.* (4)(a), (f). My recusal is not required under either of these provisions because, as I have explained, my statements did not reflect personal bias or prejudice to Gableman but instead my assessment of his record as a justice and candidate for justice, and did not concern any of the issues or controversy in this case.

N.W.2d 735 (Protasiewicz, J.). And for that reason, no objective, reasonable observer viewing these statements could conclude they establish a serious risk of actual bias. Although Gableman tries to characterize my comments as reflecting a view of "Gableman's moral turpitude," and his "professional judgment and character," no objective reasonable observer would understand them as such. Simply put, I expressed my disagreement with Gableman's actions as a candidate and justice between 2008 and 2018. That disagreement is irrelevant to whether he engaged in attorney misconduct in 2021 and 2022, and whether I can impartially adjudicate claims that he did so now.

As a candidate for this court and as a justice, I have always emphasized the importance of recusal—when it is required—in ensuring that litigants have a fair hearing before a fair tribunal and that the public perceives our decisions as fair and impartial. Indeed, I made this point in many of the articles and interviews Gableman cites in support of his motion, and I still believe it today. Nevertheless, recusal is required only when the facts and the law compel it, and we must not allow it to be misused as "a litigation weapon" to allow litigants to pick the judges that decide their cases. *See Miller*, 392 Wis. 2d 49, ¶126 (Hagedorn, J., dissenting). Because my recusal is not required in this case:

IT IS ORDERED that the Motion to Recuse Justice Rebecca Frank Dallet filed by Michael J. Gableman is denied.

Samuel A. Christensen
Clerk of Supreme Court

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