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January 15, 2010

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You are hereby notified of the following supplement to the order issued by Justice Michael J. Gableman on September 10, 2009:

No. 2007AP795State v. Allen L.C.# 1995CF952095

Before Michael J. Gableman, J.

On September 10, 2009, I denied the motion of defendant-appellant-petitioner, Aaron Antonio Allen, asking me to recuse myself from participation in this case. This motion, among other things, misrepresents my views regarding the important work of criminal defense attorneys and the role of judges. I supplement and reiterate my denial of the motion here in order to correct these misstatements.

I ran for a seat on this court because I, like so many others, believed that change was needed at the Wisconsin Supreme Court. In a whole host of areas of law, including but not limited to criminal procedure, the court began distorting the law to fit its own policy preferences. It invented new theories of liability and new protections for criminal defendants that were unwise and unjustified by the law.

No. 2007AP795

State v. Allen L.C.# 1995CF952095

In my campaign for the court, I stressed that I believe the role of a judge is to say what the law is, not to twist the law to fit the judge's personal policy preferences. For both philosophical and practical reasons, the court's excesses in criminal procedure became a primary focal point of my campaign. To make my case, I criticized specific decisions my opponent joined or authored. I successfully sought, received, and publicized endorsements by sheriffs, district attorneys, and other members of law enforcement throughout the state, endorsements which I received in much higher numbers than my opponent. I also emphasized my background as a prosecutor and contrasted it with my opponent's background as a criminal defense attorney. Outside individuals and groups, over which I had no control and with whom I had no contact, also took up this theme.

I was trying to communicate—imperfectly and in shorthand, a necessity in judicial campaigns—that my opponent's background and track record on the court revealed that he was far too willing to expand protections for criminal defendants when, in my view, neither the law nor common sense dictated such results.

Allen now argues that I should recuse myself from this case, and by extension, all criminal cases, because I am allegedly biased against criminal defendants. Allen argues that my campaign speech and the political speech of outside groups (apparently attributed to me) reveals that I am biased against criminal defendants and/or criminal defense attorneys, and that even if I am not, other people could reasonably believe that I am.

The allegations in Allen's motion are simply wrong and a gross distortion of my campaign, my public statements, and my actions as a judge and justice. Allen's motion has had the unfortunate effect of perpetuating and publicizing his distortions of my views.

Let me set the record straight as simply and plainly as I can: I have never, nor would I ever, promise to rule against all issues raised by criminal defendants (and if I had, it is a promise I have already broken). What I promised was to give law enforcement and criminal defendants a fair hearing before the court without bias or prejudgment. I promised to consider both the rights of victims and the rights of criminal defendants. Above all, I promised to decide each case impartially. I promised to be a justice who would faithfully apply the law as it is, not how I wanted it to be. Repeatedly and all around the state, I promised to give the plain meaning of the law a fair and unbiased application.

Let me further state without hesitation that I firmly believe in the important work of criminal defense attorneys. They serve a vital function in our adversarial system and deserve the highest respect and praise. Their work often goes unnoticed, and is frequently underappreciated. I am thankful for the excellent work of the criminal defense bar before this court and around the state. They zealously defend their clients to help ensure that constitutional rights are protected and our system is fair to those accused of crimes. Their work is, in a word, indispensable to our system of justice—so indispensable, in fact, that the right to counsel for all, including indigent defendants, is protected by the United States and Wisconsin Constitutions.

Finally, let me reiterate my commitment to a modest and impartial judiciary. I see my role as a justice no differently than I did during my campaign. I endeavor to apply the law, not to enact my preferred policy objectives. In each case, I work to understand and apply the law to that case, regardless of the litigants. I have never, and will never, prejudge a case because one of the parties is a criminal defendant or because the interests of law enforcement weigh on one side. I have only, and will only, do what I took a solemn oath to do: apply the law fairly and impartially to all litigants.

No. 2007AP795

State v. Allen L.C.# 1995CF952095

Having therefore considered the motion of defendant-appellant-petitioner, Aaron Antonio Allen, and all supplements filed in support of the motion individually directed to me from participation in Case No. 2007AP795, and after careful consideration of the motion for recusal;

IT IS ORDERED that the motion to Justice Michael J. Gableman individually is hereby denied.

David R. Schanker
Clerk of Supreme Court