

STATE OF WISCONSIN
IN SUPREME COURT

Appeal No. 2007AP2711-CR
(Walworth County Case No. 2005CF80)

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DONALD J. MCGUIRE,

Defendant-Appellant-Petitioner.

**MOTION FOR RECUSAL OF JUSTICE
MICHAEL GABLEMAN ON STATUTORY
AND ETHICAL GROUNDS**

Petitioner, Donald J. McGuire, by undersigned counsel, respectfully moves the Honorable Michael Gableman pursuant to Wis. Stat. §757.19(2)(g), SCR 60:04 & (a), and Internal Operating Procedure II,L,1 (Wis. S. Ct.), for the entry of any order recusing himself from any participation in the consideration or decision of this matter.

As grounds therefore, counsel submits that, for the reasons stated in McGuire's Motion for Recusal of Justice Michael Gableman on Due Process Grounds, the facts of this case demonstrate either actual bias or the appearance of bias by Justice Gableman in favor of the state and against those, such as McGuire who are accused of crimes. Recusal thus is required on any of four grounds:

1. Pursuant to the Code of Judicial Conduct, "a judge shall recuse himself or herself in a proceeding when the facts and circumstances the judge knows or should reasonably know establish . . . [that] the judge has a personal bias or prejudice concerning a party" SCR 60:04(4) & (a). Justice Gableman,

both as a candidate for the Supreme Court and in responding to the judicial ethics complaint against him, has demonstrated an actual bias in favor of the state and against those accused of crime. *See* Motion for Recusal of Justice Michael Gableman on Constitutional Grounds at 29-34.

2. Recusal is appropriate on the same grounds under Wis. Stat. §757.19(2)(g), which mandates recusal when the “judge determines that, for any reason, he or she cannot . . . act in an impartial manner.”
3. Pursuant to the Code of Judicial Conduct, “a judge shall recuse himself or herself in a proceeding . . . 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.” SCR 60:04(4). Given Justice Gableman’s actions and statements, both as a candidate for the Supreme Court and in responding to the judicial ethics complaint against him, which demonstrated actual or apparent bias in favor of the state and against those accused of crime, *see* Motion for Recusal of Justice Michael Gableman on Constitutional Grounds at 29-34, a reasonable, well-informed person would reasonably question his ability to be impartial in this case. Likewise, given both the nature and the extent of support of his candidacy by third-party special interests which created an overwhelming temptation, probability, and appearance of bias in favor of the state and against those accused of crimes, *see* Motion for Recusal of Justice Michael Gableman on Constitutional Grounds at 34-37, a reasonable, well-informed person would reasonably question his ability to be impartial in this case.
4. Pursuant to Wis. Stat. §757.19(2)(g), a judge must recuse himself if the “judge determines that, for any reason, . . . it appears he or she cannot, act in an impartial manner.” Justice Gableman’s actions and statements, both as a candidate for the Supreme Court and in responding to the judicial ethics

complaint against him, demonstrated actual or apparent bias in favor of the state and against those accused of crime, as did the nature and extent of support to his candidacy by third-party special interests which created an overwhelming temptation, probability, and appearance of bias in favor of the state and against those accused of crimes. *See* Motion for Recusal of Justice Michael Gableman on Constitutional Grounds at 29-37.

For any or all of these reasons, therefore, recusal is required in this matter.

Dated at Milwaukee, Wisconsin, October 2, 2009.

Respectfully submitted,

DONALD J. MCGUIRE,
Defendant-Appellant-Petitioner

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