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FOR IMMEDIATE RELEASE

MILWAUKEE, WISCONSIN (April 18, 2009):

**MOTIONS TO RECUSE JUSTICE MICHAEL GABLEMAN FILED
IN WISCONSIN SUPREME COURT**

On Friday, April 17, 2009, Attorney Robert R. Henak and Henak Law Office, S.C. filed two motions in the Wisconsin Supreme Court seeking the recusal or disqualification of Justice Michael Gableman from participating in the consideration or decision of the case of *State v. Aaron Antonio Allen*, Appeal No. 2007AP795.

The grounds for the motions are that (1) as a candidate for the office of Justice of the Wisconsin Supreme Court, Candidate Gableman relied upon an agenda of promoting the interests of the prosecutorial arm of state government while denigrating both the legal rights of those accused of crimes and their counsel, and (2) Candidate Gableman received an estimated \$3 million in support from third-party special interests in the form of advertisements promoting the same type of agenda. That agenda demonstrates both actual bias in favor of the prosecution and against those, such as Allen, accused of a crime, and the impermissible appearance of bias. Interested parties should review the motions themselves for the legal and factual bases for these allegations.

Similar issues currently are pending before the United States Supreme Court. in *Caperton v. A.T. Massey Coal Company, Inc.*, 129 S.Ct. 543 (2008) (granting certiorari review). *Caperton* addresses the question of whether due process required recusal of a West Virginia Supreme Court justice who had recently defeated a sitting justice with the help of approximately \$3 million in independent expenditures by the CEO of a corporate litigant who was seeking to overturn a \$50 million judgment against it. The justice in question declined to recuse himself and provided the decisive vote to overturn the judgment against his benefactor's company. The United States Supreme Court heard argument in *Caperton* on March 3, 2009, and a decision is expected by the end of its term in July, 2009

Last fall, the Wisconsin Supreme Court appointed Attorney Henak to represent Mr. Allen on a *pro bono* (unpaid) basis on questions of legal procedure for challenging the constitutional validity of a conviction or sentence. The Court granted review in March,

2009, and the case currently is in briefing.

Two recusal motions were required in Allen's case because, under Wisconsin law, recusal on statutory grounds or under the Code of Judicial Conduct is to be determined solely by the challenged judge or justice. Whether recusal is required on due process grounds, however, must be decided by Court as a whole.

The standards for recusal on all three grounds are roughly the same, requiring recusal whenever the judge in question either is actually biased for or against one party to the litigation, or when the circumstances demonstrate the appearance of such bias.

Given the presumption that all judges will act impartially, the decision to seek recusal is not one to be made lightly. A motion to recuse a judge for actual or apparent bias accordingly should be made only in the most extreme circumstances. For the reasons stated in his motions, Attorney Henak believes that Justice Gableman's statements and actions as a candidate reflect exactly such an extreme circumstance, therefore requiring his recusal in Mr. Allen's case.

For the past 26 years, Attorney Robert R. Henak has focused his practice on representing those accused of crimes. For the past 9 years, along with the other attorneys at Henak Law Office, S.C., he has focused his practice entirely on post-conviction and appellate work in the Wisconsin and federal courts, seeking relief for those unfairly convicted or sentenced on criminal charges. To date, his cases have resulted in nearly 100 published decisions and a much larger number of unpublished decisions. Henak has represented either a litigant or an interested third party before the Wisconsin Supreme Court on nearly two dozen occasions.

PDF copies of Attorney Henak's motions for recusal of Justice Gableman are available at www.henaklaw.net.