

STATE OF WISCONSIN  
IN SUPREME COURT  
Case No. 2006AP1811-CR

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STATE OF WISCONSIN,

Plaintiff-Respondent-Petitioner,

v.

PATRICK C. CARTER,

Defendant-Appellant.

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**Motion for Recusal of the Honorable Michael Gableman on  
Statutory and Ethical Grounds**

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Patrick C. Carter, Defendant-Appellant in this case, through his attorney, Assistant State Public Defender Ellen Henak, hereby moves the Honorable Michael Gableman, pursuant to Wisconsin Statutes §757.19(2)(g), SCR 60:04(4) & (4)(a), and Internal Operating Procedure II, L, 1 (Wis. S. Ct.), for the entry of an Order recusing himself from any further participation in the consideration or decision of this matter.

As grounds for this motion, Mr. Carter respectfully submits that, for the reasons state in his Motion for Recusal of the Honorable Michael Gableman on Due Process Grounds (which is being filed at the same time as this motion), 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 Mr. Carter, who have been accused and convicted of crimes. Recusal therefore is required on the following grounds:

1. Pursuant to the Code of Judicial Conduct, “a judge shall recuse himself 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) & (4)(a). Justice Gableman, in responding to the judicial ethics complaint against him and as a candidate for

Justice of the Wisconsin Supreme Court, has demonstrated actual bias in favor of the state and against those accused of crimes. *See* Motion for Recusal of the Honorable Michael Gableman on Constitutional Grounds at 27-36.

2. Pursuant to Wisconsin Statutes §757.19(2)(g), recusal is appropriate on the same grounds as set forth in paragraph 1 because that statute 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). Justice Gableman’s actions and statements in responding to the judicial ethics complaint against him and, prior to that, as a candidate for Justice of the Wisconsin Supreme Court, demonstrated actual or apparent bias in favor of the state and against those accused of or convicted of crimes. *See* Motion for Recusal of Motion for Recusal of the Honorable Michael Gableman on Constitutional Grounds at 27-36. Given these actions and statements, a reasonable, well-informed person would reasonably question his ability to be impartial in this case. Similarly, the nature and extent of support of his candidacy by third-party special interests created an overwhelming temptation, probability, and appearance of bias in favor of the state and against those accused of or convicted of crimes, especially in the absence of any repudiation of their views and in light of the recent reiteration, through his attorney, of these views on September 16, 2009. Given the nature and extent of this support, and the lack of any repudiation of it, a reasonable, well-informed person would reasonably question his ability to be impartial in this case.

4. Pursuant to Wisconsin Statutes §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.” The actions and statements of the Honorable Michael Gableman, both in responding to the judicial ethics complaint against him and as a candidate, demonstrated actual or apparent bias in favor of the state and against those accused of or convicted of crimes, as did the nature and extent of the support to his candidacy by third-party special interests. These actions and statements, especially in light of the lack of repudiation of these views, created an overwhelming temptation, probability, and appearance of bias in favor

of the state and against those accused of or convicted of crimes. *See* Motion for Recusal of the Honorable Michael Gableman on Constitutional Grounds at 27-36.

WHEREFORE, Patrick C. Carter respectfully requests that the Honorable Michael Gableman grant his motion and enter an Order recusing himself from any further participation in the consideration or decision of this matter.

Dated at Milwaukee, Wisconsin, October \_\_, 2009.

Respectfully submitted,

PATRICK C. CARTER, Defendant-Appellant.

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