

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST MICHAEL J.
GABLEMAN, ATTORNEY AT LAW.

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OFFICE OF LAWYER REGULATION,

CLERK OF SUPREME COURT
OF WISCONSIN

Complainant;

Case No. 24-AP-2356

MICHAEL J. GABLEMAN,

Case Code: 30912

Respondent.

**RESPONDENT MICHAEL J. GABLEMAN'S
RESPONSE TO OLR'S OPENING SUBMISSION**

Respondent Michael J. Gableman, by his undersigned attorneys, submits this response to OLR's Opening Submission, filed with the Court on April 25, 2025. In making this response, Attorney Gableman does not repudiate the stipulation he entered, in which he averred that he cannot successfully defend against the allegations of the Complaint, and agreed to a three-year suspension. That stipulation called for OLR to file a submission addressing (1) why the record demonstrates an adequate factual basis for the violations alleged in the Complaint and (2) why a three-year suspension is an appropriate level of sanction for those violations. To that end, OLR has filed an 86-page memorandum and a two-volume set containing 87 exhibits. This submission is not a refutation of OLR's. To the contrary, the parties are in agreement: OLR has said that on this record, a three-year suspension is sufficient, and Attorney Gableman does not argue otherwise.

Attorney Gableman raises no factual dispute with respect to OLR's Opening Submission, and does not submit any additional factual material of his own. The goal of this response is simply to provide some additional context that the Referee may find helpful. Specifically, when weighing the question of what sanction to impose, sources of guidance include prior case law, aggravating and mitigating factors, and the ABA Standards for Imposing Lawyer Sanctions. *DeLadurantey v. DeLadurantey* (*In re DeLadurantey*), 2022 WI 66, ¶33, 976 N.W.2d 844, 853. It is on mitigating factors that this submission focuses.

To set the stage, Attorney Gableman was hired to investigate election administration in Wisconsin in mid-2021. (Complaint, ¶ 4.) Election integrity is a politically charged topic, especially since 2020, and although the Complaint doesn't say this, it was clear at the time that the Wisconsin legislature was getting on the bandwagon with other states that were investigating the same things, whether due to genuine concerns about the issue, or as a piece of political theater. See, for example, the passage quoted at paragraph 190 of OLR's Opening Submission: hiring attorney Gableman was a political gesture, and when he became a political liability, his employment was terminated. (Complaint, ¶ 4.)

At several junctures, OLR's Opening Submission points out that this case exists "in a league of its own." (See, e.g., OLR's Opening Submission, ¶ 153.) That's certainly correct, and one of the key reasons is that Attorney Gableman was not retained by a client who needed legal assistance — he was hired by a sophisticated legislative body to serve a

political agenda. Obviously, by virtue of his status as a lawyer, he remained subject to the rules of professional conduct, but he was not playing a standard lawyer role. As OLR notes, Attorney Gableman's role was "the functional equivalent of holding elective office." (OLR's Opening Submission, ¶ 177.) Attorney Gableman does not disagree. Generally when legislatures hire lawyers, it is for well-defined tasks: to defend the constitutionality of an act when the Attorney General declines to do so, to assist with redistricting, *etc.* In those situations, the nature of the legal work to be performed is clear, and the lawyers know where they stand. Here, the project was *sui generis*, without a definite objective, and that is part of what led to trouble.

Most of the duties imposed on lawyers by the rules of professional conduct are owed to clients. Attorney Gableman is charged with dereliction of some of those duties, so it makes sense to ask, "who was his client?" The obvious answer is the Wisconsin State Assembly. That's correct, at least superficially, because that's the body that authorized Attorney Gableman's hiring, and the funding for his work. (Complaint, ¶ 4.) But the Assembly is comprised of 99 seats, with a deep partisan split: surely not everyone in the Assembly approved of hiring Attorney Gableman. At the same time, some of the members are election deniers,¹ who might well have preferred Attorney Gableman's investigation to continue. Finally, the legislature ultimately answers to the people of

¹ States United Democracy Center and States United Action estimates that there are 10 election deniers in the Assembly, accounting for roughly 10% of the seats. See <https://statesunited.org/resources/states-of-denial/#wisconsin-2> (last visited May 8, 2025).

Wisconsin, a population that also includes diverse points of view on the topic of election interference. For example, SCR 20:1.13 requires an attorney with an organization for a client to take direction from its duly authorized constituents. But when a lawyer believes that such a duly authorized constituent is taking action that will harm the organization, and the circumstances warrant it, the lawyer must refer the matter to “the highest authority that can act in behalf of the organization as determined by applicable law.” SCR 20:1.13(b). That’s another unusual aspect of this case: it is a Rorschach test, in the sense that how one interprets at least some of Attorney Gableman’s actions probably depends on one’s view of what’s in the Assembly’s best interests, which in turn might depend on one’s view of the 2020 election.

None of this is to suggest that OLR is factually incorrect, or to mount a defense to any of OLR’s charges; Attorney Gableman stands by his stipulation. The point is simply that to the extent this case may be in a league of its own, that’s in part because the events that precipitated it were uncharted territory for Attorney Gableman as well.

OLR identifies just a single mitigating factor: Attorney Gableman has no prior disciplinary record. (Complaint, ¶ 3; OLR’s Opening Submission, ¶ 194.) In all other respects, OLR excoriates Attorney Gableman, but reality is more nuanced. Specifically, OLR writes:

Dishonest or selfish motive. Much of Gableman’s misconduct reflects his selfish motive; that is, he pursued personal objectives, not those of his client. Specifically, he used the representation to indulge his personal desire to overturn the 2020 Wisconsin Presidential election results, to

profit financially by prolonging the representation; and later to aid the partisan political recall effort against Vos.

(OLR's Opening Submission, ¶ 196.) There's a lot to unpack in that paragraph. First, there's the assumption that Attorney Gableman's objectives were not aligned with those of his client. This includes that presumption that the Assembly didn't know what it was getting when it selected Attorney Gableman for the job, and tasked him with his mission. True, Attorney Gableman received compensation for his work, but if that alone were enough to support the finding of a selfish motive for the purposes of imposing discipline, essentially every disciplinary case would involve a selfish motive, because generally lawyers are paid for their work. Finally, Mr. Vos was not personally Attorney Gableman's client, and there's nothing inherently selfish about supporting the recall of the politician who installed Attorney Gableman in his position, only to undermine it later. Attorney Gableman submits that an equally valid gloss of the facts is that the Assembly changed direction, and when Attorney Gableman did not, there was friction and he was fired.

Clients change their minds about what they want, they disagree with their lawyers, they fire their lawyers, and they blame their lawyers. Those changes in the attorney-client relationship can have many causes, not all of which can be laid at the feet of the lawyer. None of that is out of the ordinary. What's unusual here is that it happened in such a public way, over such divisive issues. One of the mitigating factors in the ABA Standards for Imposing Lawyer Sanctions is the imposition of other penalties or sanctions. (ABA Standard 9.32(k).) Attorney Gableman's case has been the subject of


unfavorable articles in the Washington Post, the ABA Journal, the Milwaukee Journal Sentinel, and numerous other outlets, including various political web sites. While not a formal sanction *per se*, the degree to which Attorney Gableman has been publicly pilloried is another unusual aspect of the case. No doubt the Referee's report will precipitate another round of articles, as will the Supreme Court's eventual decision on the matter.

To repeat, Attorney Gableman does not seek to walk back his stipulation or to take issue with the factual basis that OLR has supplied for the Referee's consideration. He has agreed to the sanction OLR seeks, and which its Opening Submission explains is justified: a three-year suspension of his license. But he is conscious of the fact that the Referee is not bound by that agreement, so in submitting these remarks, Attorney Gableman hopes only that the tone and the sheer volume of OLR's Opening Submission do not persuade the Referee that a greater sanction is required. Attorney Gableman does not dispute the facts of OLR's narrative, but he did not set out to commit misconduct.

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Respectfully submitted this 9th day of May, 2025.

HURLEY BURISH, S.C.

A handwritten signature in black ink, appearing to read 'P. B. Engel', is written over a horizontal line.

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