



## STATEMENT OF NEW YORK CITY BAR ASSOCIATION CONCERNING GRIEVANCE COMPLAINTS FILED AGAINST RUDOLPH GIULIANI

### I. INTRODUCTION

In prior statements and reports, the New York City Bar Association detailed “the continuing actions of Trump Administration officials to undermine the rule of law in our nation,” and called on “all members of our profession” to fulfill their “indispensable role . . . in restoring the rule of law and renewing our nation’s commitment to compliance with law by those entrusted with governmental power.”<sup>1</sup> Since the Association issued those statements, a number of professional disciplinary complaints have been brought against attorneys who participated in the Trump campaign’s efforts to overturn the Presidential election results and, in effect, subvert our democratic system of government.<sup>2</sup>

Several of these disciplinary complaints have been brought against Rudolph Giuliani, who is licensed to practice law in the State of New York. Most notably, these include a complaint brought by Michael Miller, the past President of both the New York State Bar Association and the

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<sup>1</sup> *New York City Bar Association Calls on American Lawyers to Support the Rule of Law*, December 24, 2020, <https://www.nycbar.org/media-listing/media/detail/calling-american-lawyers-to-action-support-the-rule-of-law>. See also *id.* (recognizing that “lawyers have been prominently involved in causing the damage to our community’s respect for law and our Constitutional government” and encouraging attorneys to conduct themselves “[a]s guardians of the rule of law in our constitutional democracy . . . both by our words and our deeds”); *New York City Bar Association Statement on Lawyers’ and Public Officials’ Obligations During the Presidential Transition Period*, November 18, 2020, <https://www.nycbar.org/media-listing/media/detail/lawyers-and-public-officials-obligations-during-the-presidential-transition-period> (raising concerns “regarding the actions of lawyers in some of the post-election challenges” on behalf of President Trump).

<sup>2</sup> See, e.g., *The lawyers who pushed Trump’s falsehoods may soon be done lawyering*, Washington Post, February 3, 2021, <https://www.washingtonpost.com/outlook/2021/02/03/powell-wood-accountability-lawyer/>; *Opinion, Lawyers Enabled Trump’s Worst Abuses*, New York Times, February 12, 2021, <https://www.nytimes.com/2021/02/12/opinion/politics/trump-lawyers.html>. For example, by an order dated February 19, 2021, the United States District Court for the District of Columbia referred attorney Erick G. Kaardal to that court’s Committee on Grievances for bad faith conduct that included “fil[ing] a sweeping Complaint filled with baseless fraud allegations and tenuous legal claims to undermine a legitimate presidential election.” Order dated February 19, 2021 in *Wisconsin Voters Alliance v. Vice President Michael R. Pence*, Civ. No. 20-3791 (D.D.C.), at p.4, [https://www.scribd.com/document/495302463/Wisconsin-Voter-Alliance-Kardaal-Order#from\\_embed](https://www.scribd.com/document/495302463/Wisconsin-Voter-Alliance-Kardaal-Order#from_embed)

#### **About the Association**

*The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.*

New York County Lawyers' Association, and other current and past Bar leaders from throughout New York State (the "Miller Complaint"), and another brought by a non-partisan organization named Lawyers Defending American Democracy that has as its purpose to foster adherence to the rule of law (the "LDAD Complaint").

The complaints against Mr. Giuliani allege serious misconduct. They do so in great detail, and appear to be substantiated by extensive evidence – consisting in large part of Mr. Giuliani's own statements. They describe a pattern of misconduct that Mr. Giuliani engaged in both inside and outside the courtroom with the purpose of subverting a Presidential election, culminating in his speech on a podium at the Ellipse in Washington DC on January 6, 2021 when he urged a crowd of angry Trump supporters to engage in "trial by combat."<sup>3</sup> These allegations require a serious investigation, a hearing, and, if the allegations are substantiated, the imposition of appropriate discipline.<sup>4</sup>

The Association believes that it is important for the public to understand the basis for the disciplinary complaints that have been filed, and the disciplinary process that will be followed in connection with those complaints.

## II. THE DISCIPLINARY COMPLAINTS

All attorneys, from the newest members of the bar to the most eminent and senior, are bound by law and by the oath they take when admitted to abide by the rules of professional conduct in force in the jurisdictions where they are admitted and to support the Constitution of the United States.<sup>5</sup> As New York's highest court has repeatedly emphasized, the purpose of these rules, and "the primary concern of a disciplinary proceeding is the protection of the public in its reliance on the integrity and responsibility of the legal profession."<sup>6</sup> As described in the Miller and LDAD

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<sup>3</sup> See *Rudy Giuliani Speech Transcript at Trump's Washington, D.C. Rally: Wants 'Trial by Combat,'* January 6, 2021, <https://www.rev.com/blog/transcripts/rudy-giuliani-speech-transcript-at-trumps-washington-d-c-rally-wants-trial-by-combat>. The House Managers in the Trump impeachment trial pointed to Mr. Giuliani's statements – and President Trump's endorsement of them – as key events leading to the insurrection at the Capital. *Impeachment of President Donald J. Trump, Trial Memorandum of the United States House of Representatives*, at p. 20 (quoting President Trump, who "praised Giuliani, saying "he's got guts, he fights."). The NAACP has also brought a lawsuit on behalf of Congressman Bennie Thompson against President Trump, Mr. Giuliani and others for inciting the riot at the capital. See, e.g., *N.A.A.C.P. Sues Trump and Giuliani Over Election Fight and Jan. 6 Riot*, New York Times, February 16, 2021, <https://www.nytimes.com/2021/02/16/us/politics/naACP-sues-trump-giuliani-proud-boys-capitol.html>.

<sup>4</sup> The investigation and hearing would be conducted by representatives of the New York court system, which has responsibility for enforcing New York's Rules of Professional Conduct, unlike other states where local bar associations fulfill this role.

<sup>5</sup> The oath taken by New York attorneys upon becoming members of the bar is set forth in New York's State Constitution, as follows: "I do solemnly swear (or affirm) that I will support the constitution of the United States, and the constitution of the State of New York, and that I will faithfully discharge the duties of the office of [attorney and counselor-at-law], according to the best of my ability." Just as the House Managers raised questions about whether President Trump violated his oath of office, so too do the allegations in the disciplinary complaints raise questions about whether Mr. Giuliani has violated his own.

<sup>6</sup> *Matter of Rowe*, 80 N.Y.2d 336. As former U.S. Supreme Court Justice William J. Brennan Jr. wrote in 1952, "[w]e are a society governed by law, whose integrity it is the lawyer's special role to guard and champion," and a lawyer's misconduct "perforce imperils not him alone but the honor and integrity of his profession which depends

Complaints, an attorney – particularly one of notable public stature – undermines these principles when s/he participates in an all-out assault on a free and fair Presidential election based on misrepresentation and mischaracterization of the facts.

The ethical rules against which Mr. Giuliani’s conduct will be measured are the New York Rules of Professional Conduct, or to the extent that the misconduct occurred in courts of other jurisdictions, the ethical rules applicable in those jurisdictions. The specific rules at issue in the complaints against Mr. Giuliani are discussed below and include, among others, those that prohibit an attorney from knowingly making a false statement,<sup>7</sup> filing frivolous litigation,<sup>8</sup> or otherwise engaging in conduct that is prejudicial to the administration of justice or that adversely reflects on the lawyer’s fitness as a lawyer.<sup>9</sup> These rules establish a floor below which a lawyer’s conduct may not fall without being at risk of discipline.<sup>10</sup>

The New York courts have not hesitated to impose discipline on attorneys whose conduct has fallen below the floor established by the rules.<sup>11</sup> Discipline is not reserved for situations where the attorney’s misconduct takes place in the courtroom. Instead, the rules extend to all of an attorney’s activities — particularly acts that are prejudicial to the administration of justice and/or adversely reflect on the lawyer’s fitness as a lawyer.<sup>12</sup> For instance, in one recent, highly

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for its very existence upon public trust and confidence.” *In re Howell*, 89 A.2d 652, 653-54 (N.J. 1952) (concurring opinion).

<sup>7</sup> Rule 4.1, titled “Truthfulness in Statements to Others,” provides: “In the course of representing a client, a lawyer shall not knowingly make a false statement of fact or law to a third person.” The rule covers any statement a lawyer may make, inside or outside the courtroom that relates to a matter on which the lawyer is working on behalf of a client. Rule 3.3(a) also addresses false statements and is more narrowly tailored to statements made in court. Rule 3.3(a) provides in part: “A lawyer shall not knowingly . . . make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.” Additionally, Rule 8.4(c) prohibits an attorney from engaging in “conduct involving dishonesty, fraud, deceit or misrepresentation.”

<sup>8</sup> Rule 3.1, titled “Non-Meritorious Claims and Contentions,” provides in part: “A lawyer shall not bring or defend a proceeding or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous.” This same Rule further provides: “A lawyer’s conduct is frivolous if . . . the lawyer knowingly asserts material factual statements that are false.”

<sup>9</sup> Rules 8.4(b), (d).

<sup>10</sup> *Matter of Holtzman*, 78 N.Y.2d 184, 192 (1991) (“[T]he policy underlying the rules governing professional responsibility . . . seeks to establish a ‘minimum level of conduct below which no lawyer can fall without being subject to disciplinary action.’”). The expectation is that attorneys will far exceed this minimum level of acceptable conduct. The Preamble to the Rules emphasizes this point, stating: “[A] lawyer should further the public’s understanding of and confidence in the rule of law and the justice system because, in a constitutional democracy, legal institutions depend on popular participation and support to maintain their authority.”

<sup>11</sup> There are many relevant examples. *See, e.g., Holtzman*, 78 N.Y.2d at 190 (attorney reprimanded for making “false accusations” against a judge in furtherance of objective to “protect the public interest and maintain the integrity of the judicial system”); *Matter of Chiofalo*, 909 N.Y.S.2d 36 (1<sup>st</sup> Dep’t 2010) (two-year suspension for bringing frivolous lawsuit); *Matter of Rosner*, 3 N.Y.S.3d 132 (2d Dep’t 2015) (one-year suspension for making misrepresentations to opposing counsel).

<sup>12</sup> *See, e.g., Matter of Bikman*, 760 N.Y.S.2d 162 (1<sup>st</sup> Dep’t 2003) (18-month suspension where attorney misled owner of her sister’s rent-controlled apartment so that attorney could continue to live in apartment after sister’s death); *Matter of Dear*, 934 N.Y.S.2d 141 (1<sup>st</sup> Dep’t 2011) (six-month suspension where attorney fought traffic

publicized example a New York attorney was publicly censured for going on a racist rant in a deli.<sup>13</sup> While the conduct at issue there was reprehensible, and the Association condemns it, that conduct did not approach the scope of Mr. Giuliani's alleged misconduct in attempting to undermine the outcome of a Presidential election.

### **1. The Lawyers Defending American Democracy Complaint**

The LDAD Complaint alleges that Mr. Giuliani engaged in a nationwide public campaign<sup>14</sup> to convince the general public and the courts of massive voter fraud and a stolen Presidential election, despite the fact that he had no evidence to support these sweeping claims. LDAD alleges that Mr. Giuliani engaged in baseless litigation seeking to invalidate millions of votes in battleground states, gave false testimony before state legislators in both formal and informal hearings, used a false narrative of voter fraud to try to persuade the public that Vice President Pence should refuse to certify the electoral vote count (which he lacked authority to do under the United States Constitution), and incited a crowd about to march on the Capitol to engage in "trial by combat."

LDAD further alleges that Mr. Giuliani lacked any evidence to support his public assertions of widespread election fraud and even admitted in at least one court that there was no evidence of fraud.<sup>15</sup> Moreover, while more than 60 lawsuits were filed challenging the election results, the courts dismissed every one of those cases except one that did not involve voter fraud and dealt with whether election observers had to stand 6 feet from poll workers counting ballots.<sup>16</sup>

The LDAD Complaint focuses, in particular, on Mr. Giuliani's role in *Trump v. Boockvar*, a case brought in a Pennsylvania federal District Court by which the Trump campaign sought to disenfranchise millions of voters based on narrow claims of purported defects in voting procedures.<sup>17</sup> Mr. Giuliani was not the original attorney in the case, and was substituted in the

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ticket by falsely claiming that police officer had made anti-Semitic slurs when issuing the ticket). Notably, in *Dear*, the court imposed sanctions notwithstanding evidence that the attorney was suffering from psychological problems. Similarly, in *Rowe*, New York's highest court explained that the fact that an attorney had escaped criminal liability for his conduct based on an insanity defense was not a valid defense against disciplinary charges because "[a] disciplinary proceeding is concerned with fitness to practice law, not punishment." 80 N.Y.2d at 341; *see also id.* ("Although respondent was not criminally responsible for his acts, they tended to undermine public confidence in the Bar and, as such, they properly provided a basis for disciplinary action.").

<sup>13</sup> *Matter of Schlossberg*, 192 A.D.3d 8 (2020).

<sup>14</sup> Appendix A of the complaint includes a compilation of Mr. Giuliani's reported statements on YouTube videos, press conferences, appearances before legislative committees, and social media messages.

<sup>15</sup> The LDAD complaint cites to the head of the U.S. Cybersecurity and Infrastructure Security Agency, Christopher Krebs's, description of the "November 3<sup>rd</sup> election as the most secure in American History" and also notes that on December 1, Attorney General Barr stated that he had "not seen fraud on a scale that could have effected a different outcome in the election."

<sup>16</sup> LDAD Complaint at 5.

<sup>17</sup> The issues in *Boockvar* were limited in scope to whether (1) election observers had been able to adequately watch the counting of the ballots, and (2) absentee balloting issues.

morning of the oral argument of an important motion after several other counsel withdrew. At oral argument, he claimed that 2.6 million ballots should be invalidated due to widespread voter fraud. However, when questioned by the judge, Mr. Giuliani admitted that fraud was not even alleged in the complaint. The District Court granted the Defendants' motions to dismiss with prejudice. On appeal, the Third Circuit issued an opinion noting that the Trump campaign cited neither specific evidence nor authority to bar the Commonwealth from certifying its election results.<sup>18</sup>

Outside the courtroom, Mr. Giuliani's alleged role in the Trump campaign's promotion of false election claims expanded to a nationwide tour of appearances in state legislatures and press interviews in December 2020. Among the examples of this conduct was Mr. Giuliani's appearance before the Georgia State Senate during which he presented a 90 second video clip showing what Mr. Giuliani claimed to be evidence of fraud at a vote tabulation center. Within days of his appearance, Georgia election officials and all major media outlets demonstrated that Mr. Giuliani's supposed evidence was false. Mr. Giuliani used the same tactic in Missouri, stating that there had been "indisputable evidence of fraud captured on videotape."<sup>19</sup>

Then, according to the LDAD Complaint, in an interview that he gave in the days leading up to the certification of the Presidential election results, Mr. Giuliani stated that Vice President Pence could determine on January 6<sup>th</sup> that the election was conducted illegally in six states and refuse to certify the electoral votes. Finally, in a rally to reverse the election, Mr. Giuliani again made references to a stolen election and told the assembled group of Trump supporters that he would stake his reputation that criminality in the election would be established, and urged them to engage in "trial by combat."<sup>20</sup>

The LDAD Complaint calls for Mr. Giuliani to be suspended on an interim basis while more permanent sanctions are under consideration, arguing that his actions threatened the public interest. It alleges that Mr. Giuliani's conduct violated New York Rules of Professional Conduct including: (1) Rule 3.1 "Non-Meritorious Claims and Contentions" (by his actions in the *Boockvar* matter knowing his claims were unsupported in law or fact), (2) Rule 4.1 "Truthfulness in Statements to Others" (by his repeated out-of-court assertions of widespread voter fraud without proof), (3) Rule 4.4(a) "Respect for Rights of Third Persons" (by his intent to harm the third party voters in the *Boockvar* litigation), (4) Rule 8.4 (c) "Misconduct Involving Dishonesty" (by knowingly making false public statements of widespread election fraud to deceive the public), and (5) Rule 8.4(h) (by engaging in conduct that adversely reflected on his fitness to practice law by seeking to invalidate millions of votes without any factual justification).

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<sup>18</sup> LDAD Complaint at 9-10. The court noted that the campaign never alleged that any ballot was fraudulent or cast by an illegal voter. *Id.*

<sup>19</sup> *See id.* at 6.

<sup>20</sup> *Id.* at 6-7.

## **2. The Michael Miller Complaint**

The Miller Complaint acknowledges Mr. Giuliani's long and distinguished career as a U.S. Attorney for the Southern District of New York and later as Mayor of New York City to highlight what makes Mr. Giuliani's conduct so objectionable. The Miller Complaint alleges that Mr. Giuliani made statements inside and outside the courtroom to paint the election as a wide-ranging fraud conspiracy. The Complaint also alleges that, despite the lack of evidence to support his irresponsible claims and unfavorable rulings issued by a growing number of courts, Mr. Giuliani continued to make unsubstantiated statements casting doubt on the integrity of the Presidential election.

Like the LDAD Complaint, the Miller Complaint cites to the *Boockvar* case as an example of Mr. Giuliani's misconduct, as well as pointing to his public assertions of widespread election fraud including at the January 6 rally.<sup>21</sup> The latter include Mr. Giuliani's assertions that Dominion Voting Systems was part of a plot to hand the election to Joe Biden, and that its machines intentionally miscounted large numbers of votes.<sup>22</sup> Mr. Giuliani spread these false theories using social media and by other means including television appearances.

Based on these allegations, the Miller Complaint argues that Mr. Giuliani violated a number of ethics rules including: (1) Rule 3.1 prohibiting frivolous litigation (by appearing at the *Boockvar* oral argument claiming widespread voter fraud had occurred when he knew all the claims had been dropped in the pleadings), (2) Rule 3.3(a)(1) for making false statements of fact and law to a tribunal (by putting forth witnesses before the Michigan and Georgia legislatures to advance unsubstantiated claims of fraud), (3) Rule 4.1 for knowingly making false statements of fact and law to a third person in the course of representing a client (by making numerous false and unsubstantiated statements undermining the Presidential election), (4) Rule 8.4(b) for engaging in illegal conduct, (5) 8.4(c) for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation (his statements asking supporters of the Trump campaign to fight the certification of the electoral vote), (6) Rule 8.4(d) for engaging in conduct prejudicial to the administration of justice (his role in the incitement of those who stormed the Capitol), and (7) Rule 8.4(h) for engaging in conduct that adversely reflects on the lawyer's fitness as a lawyer (by repeatedly making conspiracy allegations of election fraud publicly and before multiple tribunals).

## **III. NEW YORK'S DISCIPLINARY PROCESS**

In New York, it is the court system, not local bar associations or other bodies, that is responsible for disciplining attorneys who violate New York's Rules of Professional Conduct. The process involves multiple stages of review: screening, investigation, disciplinary proceeding/hearing and appellate court review. As such, the attorney against whom charges are

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<sup>21</sup> See Miller Complaint at 3-9.

<sup>22</sup> Dominion has since sued Mr. Giuliani for defamation, seeking more than \$1.3 billion in damages. See *Rudy Giuliani Sued by Dominion Voting Systems Over False Election Claims*, New York Times, January 25, 2021, <https://www.nytimes.com/2021/01/25/us/politics/rudy-giuliani-dominion-trump.html>.

brought has several opportunities to raise defenses in confidential proceedings before discipline may be imposed, and the matter only becomes public, if at all, at the conclusion of that process.

Specifically, the conduct of New York attorneys is governed by the Appellate Divisions of the State Supreme Court and the Attorney Grievance Committees (“AGC”) appointed by the respective Appellate Division.<sup>23</sup> The procedures for an attorney disciplinary matter in New York are governed by Part 1240 of New York’s Codes, Rules and Regulations.<sup>24</sup> Complaints against attorneys are investigated and resolved by the AGC, which includes the staff that works for the AGC and a volunteer group of lawyers and non-lawyers appointed by the Appellate Division.<sup>25</sup> To serve as a Committee member, an attorney must be in good standing with the Bar of the State of New York and have a principal place of business in the department. Each Committee must have at least three non-lawyer members.<sup>26</sup> The proceedings are strictly confidential and are not open to the public.<sup>27</sup>

*Initial Screening.* Once a complaint is filed with the AGC, the Chief Attorney’s staff conducts an initial screening review.<sup>28</sup> During the initial review, the staff determine whether: (1) there is jurisdiction and (2) the allegations constitute misconduct.<sup>29</sup> The screening attorney may also determine that the complaint lacks merit.<sup>30</sup> All dismissal recommendations by the screening attorney are reviewed by the Chief Attorney.<sup>31</sup>

The AGC is not limited to the allegations in the complaint and has the ability to expand the scope and authorize its own investigation.<sup>32</sup> If a matter is not dismissed at the screening review

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<sup>23</sup> See [ww2.nycourts.gov/attorneys/grievance/index.shtml](http://ww2.nycourts.gov/attorneys/grievance/index.shtml).

<sup>24</sup> See 22 NYCRR Part 1240.

<sup>25</sup> See 2019 Annual Report, Attorney Grievance Committee, Supreme Court, Appellate Division First Department. Complaints against attorneys are most often from clients, but may also come from other attorneys or any other member of the public.

<sup>26</sup> See 22 NYCRR Part 603.4(a)(2).

<sup>27</sup> See Judicial Law Section 90(10) & 22 NYCRR § 1240.18.

<sup>28</sup> See 22 NYCRR § 1240.7(d)(1).

<sup>29</sup> The ACG may also refer the matter to mediation if there is no substantial misconduct, but there is a breakdown in communication between a client and an attorney. In addition, if a complaint involves the same substantial allegations that will be decided in pending litigation, the ACG may defer the matter pending resolution of the litigation. See 2019 Annual Report, Attorney Grievance Committee, Supreme Court, Appellate Division First Department, at p. 24.

<sup>30</sup> See *id.*

<sup>31</sup> After the initial screening review, the Chief Attorney may decline to investigate a complaint on the basis that: (1) it involves a person, or conduct not covered by the Rules of Professional Conduct; (2) the allegations, if true, would not constitute professional misconduct; (3) the complaint seeks a legal remedy more appropriately obtained in another forum; or (4) the allegations are intertwined with another pending legal action or proceeding. See 22 NYCRR § 1240.7(d)(1).

<sup>32</sup> See 22 NYCRR 1240.7(a)(1).

stage, the complaint is sent to the respondent attorney for an answer to the allegations.<sup>33</sup> Thereafter, the screening attorney prepares a summary of the allegations and the respondent attorney's defenses. The screening attorney conducts a "second screening" and may determine that the matter should be dismissed or warrants further investigation.<sup>34</sup>

*Further Investigation and Committee Action.* In situations that warrant further investigation, the matter is assigned to a staff attorney who may subpoena documents, interview witnesses, and question the respondent attorney on the record under oath.<sup>35</sup> Once the investigation is complete, the staff attorney makes a recommendation to the Committee members. The members may themselves recommend dismissal, a Letter of Advisement (when conduct only warrants a comment), a Letter of Admonition (private discipline not serious enough to warrant a disciplinary proceeding), or formal disciplinary proceedings.<sup>36</sup> The Committee may authorize a formal disciplinary proceeding if the Committee finds (1) that there is probable cause to believe that the attorney who is the subject of the complaint engaged in professional misconduct warranting the imposition of public discipline and (2) that such discipline is appropriate to protect the public, maintain integrity and honor of the profession or deter others from similar conduct.<sup>37</sup>

*Formal Disciplinary Proceeding.* Once a formal disciplinary proceeding is instituted, the respondent attorney is served with a notice of petition and has 20 days to answer.<sup>38</sup> Thereafter, the parties may either reach a resolution of discipline by consent, or conduct a hearing before a referee.<sup>39</sup> The referee acts as the fact-finder at the hearing. The burden of proof is on the AGC to establish each element of the charge by "a fair preponderance of the evidence."<sup>40</sup> The hearing is conducted in two separate parts including liability (violations of the Rules of Professional Conduct) and sanction (mitigation and aggravation evidence).<sup>41</sup> If a hearing is held, the parties

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<sup>33</sup> See 2019 Annual Report, Attorney Grievance Committee, Supreme Court, Appellate Division First Department, at p. 25.

<sup>34</sup> See 2019 Annual Report, Attorney Grievance Committee, Supreme Court, Appellate Division First Department, p. 25. If the screening attorney believes that the allegations constitute serious professional misconduct, she will bring the matter to the attention of the Chief Attorney so that it can be directly assigned to a staff attorney and, if deemed advisable, expedited. See Annual Report, Attorney Grievance Committee, Supreme Court, Appellate Division First Department, at pp. 24-25.

<sup>35</sup> See 22 NYCRR § 1240.7(b)(1).

<sup>36</sup> See 2019 Annual Report, Attorney Grievance Committee, Supreme Court, Appellate Division First Department, at p. 25.

<sup>37</sup> See 22 NYCRR § 1240.7(d)(2).

<sup>38</sup> See 22 NYCRR § 1240.80(a)(1) & (2).

<sup>39</sup> See 22 NYCRR § 1240.8(a)(5).

<sup>40</sup> See 22 NYCRR § 1240.8(b)(1).

<sup>41</sup> In order to proceed to the sanction hearing, the referee must find that at least one charge is sustained. See 2019 Annual Report, Attorney Grievance Committee, Supreme Court, Appellate Division First Department, at p. 25.



brief the matter, and the referee makes findings of fact and conclusions of law and recommendations to the Appellate Division.

*Appellate Review.* The matter is then presented to the appropriate Appellate Division of the New York court system for its decision as to whether to affirm or disaffirm the referee's findings and recommendations, and for the Appellate Division to determine the appropriate sanction.<sup>42</sup> The available public sanctions include censure, suspension, and disbarment.<sup>43</sup> Pursuant to Judiciary Law Section 90(10), the matter does not become public until the Court publicly disciplines an attorney. Conversely, if the Court determines that a private sanction is appropriate or the matter should be dismissed, it will not become public.<sup>44</sup>

As the above summary indicates, during the disciplinary proceeding, a respondent attorney has several opportunities to present defense(s) to the allegations made against him. The respondent attorney may (i) respond to the initial complaint, (ii) submit an Answer to the Petition, (iii) cross-examine the witnesses and present evidence at the hearing, and (iv) submit briefs to the referee and thereafter to the Appellate Division.<sup>45</sup> Thus, to the extent Mr. Giuliani chooses, he will have an opportunity to raise any defenses he may have to the allegations against him, including any First Amendment challenges, and/or to dispute the facts that serve as the basis for the allegations. On the issue of sanction, if applicable, he also may cite mitigating facts, potentially including, for example, his prior public service.

#### **IV. THE CONSEQUENCES OF MR. GIULIANI'S ACTIONS**

As discussed above, one of the factors examined by the Grievance Committee is whether attorney discipline is appropriate to protect the public, maintain the integrity and honor of the profession or deter others from similar conduct. In other words, the public consequences of Mr. Giuliani's actions matter.

The enforcement of the rules regulating attorney conduct is not a matter of partisan politics; it is about preserving public confidence in the integrity of the judicial system and reinforcing the importance of the rule of law. To that end, United States Presidents Richard Nixon and Bill Clinton and other prominent holders of public office who are also attorneys have been subject to professional discipline where their activities in public office have adversely reflected on their fitness as attorneys.<sup>46</sup>

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<sup>42</sup> See 22 NYCRR 1240.8(b)(1).

<sup>43</sup> Attorney misconduct is not only addressed through the attorney grievance process. In addition to discipline for ethics violations, attorneys are regularly held civilly liable for malpractice to their clients and can be held criminally liable if their conduct violates criminal statutes.

<sup>44</sup> See 2019 Annual Report, Attorney Grievance Committee, Supreme Court, Appellate Division First Department, at pp. 24, 26.

<sup>45</sup> See 22 NYCRR § 1240.8(b)(2).

<sup>46</sup> See, e.g., *Matter of Nixon*, 53 A.2d 178, 181-82 (1976) ("We note that while Mr. Nixon was holding public office he was not acting in his capacity as an attorney. However, the power of the court to discipline an attorney extends to misconduct other than professional malfeasance when such conduct reflects adversely upon the legal profession and is not in accordance with the high standards imposed upon members of the bar."); *Matter of Mitchell*, 40 N.Y.2d 153 (1976) (disbarring President Nixon's Attorney General, John Mitchell). See also, e.g., *Clinton Disbarred From*

As publicly reported and as recognized in the LDAD and Miller Complaints, not only did Mr. Giuliani play a very public and leading role in the Trump campaign’s efforts to overturn the Presidential election, but he continued to aggressively pursue those challenges even after other Trump attorneys reportedly refused to do so because it had become clear that there was no evidence to support them.<sup>47</sup> Moreover, in doing so, Mr. Giuliani used his position as an attorney – one who had previously served in senior government positions including as United States Attorney for the Southern District of New York and Associate Attorney General of the United States– to lend credence to his baseless assertions that the election results were the product of widescale election fraud.<sup>48</sup>

As New York’s highest court has explained, “Lawyers play a critical role in sustaining the rule of law and thus it is necessary that the legal profession maintain its unique ability to do so by earning the respect and confidence of society.”<sup>49</sup> The allegations against Mr. Giuliani demonstrate quite the opposite, that is, through his words and deeds he has served to undermine the rule of law as well as public confidence in the legal system and the legal profession.

We now know that when Mr. Giuliani called for “trial by combat,” the angry crowd of Trump supporters that he was stirring up took his words – and those of President Trump and others – to heart and stormed the Capitol. And this was only the culmination of a pattern of conduct, inside and outside the courtroom, that Mr. Giuliani is alleged to have engaged in with flagrant disregard for his obligations as an attorney. Indeed, that misconduct continued even after the complaints were filed, including Mr. Giuliani’s widely reported call that was intended for Alabama Senator Tommy Tuberville, in which Mr. Giuliani asked Senator Tuberville to participate in efforts to prevent certification of the electoral college vote.<sup>50</sup>

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*Practice Before Supreme Court*, New York Times, October 1, 2001, <https://www.nytimes.com/2001/10/01/national/clinton-disbarred-from-practice-before-supreme-court.html>.

<sup>47</sup> See, e.g., *77 Days: Trump’s Campaign to Subvert the Election*, New York Times, January 31, 2021, <https://www.nytimes.com/2021/01/31/us/trump-election-lie.html>.

<sup>48</sup> For instance, in the speech that he gave on January 6 immediately before the riot at the Capitol, Mr. Giuliani repeatedly emphasized that he was speaking as an attorney, starting off his comments by stating that “every single thing that has been outlined as the plan for today is perfectly legal,” and purporting to support his claims of election fraud by stating that “I’m willing to stake my reputation” – by which he could only have meant his professional reputation as a lawyer – “on the fact that we’re going to find criminality there.” See *Rudy Giuliani Speech Transcript at Trump’s Washington, D.C. Rally: Wants ‘Trial by Combat,’* <https://www.rev.com/blog/transcripts/rudy-giuliani-speech-transcript-at-trumps-washington-d-c-rally-wants-trial-by-combat>.

<sup>49</sup> *Rowe*, 80 N.Y.2d at 340.

<sup>50</sup> See, e.g., *Giuliani to Senator: ‘Try to Just Slow it Down,’* The Dispatch, January 6, 2021, <https://thedispatch.com/p/giuliani-to-senator-try-to-just-slow> (Mr. Giuliani inadvertently left the voice-mail intended for Senator Tuberville at the wrong phone number – the number for a different senator who disclosed the recording to the media).

## V. CONCLUSION

Based on the foregoing, we support a full investigation into these allegations as one step towards restoring the public's confidence that members of the bar are held accountable for their actions. Mr. Giuliani should be afforded the due process of appearing before the disciplinary body to answer for these serious allegations of misconduct, and if it is established that he violated the ethical rules that govern the practice of law in this State, he should be appropriately sanctioned.

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### **Contact**

Eric Friedman, Director of Communications | [efriedman@nycbar.org](mailto:efriedman@nycbar.org)  
Maria Cilenti, Senior Policy Counsel | [mcilenti@nycbar.org](mailto:mcilenti@nycbar.org)