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New York City Bar Association Supports Professional Disciplinary Investigations into Conduct of Rudolph Giuliani

Explains in Detail How the Process Works in New York State

New York, March 2, 2021 – Citing allegations of “a pattern of conduct, inside and outside the courtroom” that Rudolph Giuliani engaged in “with flagrant disregard for his obligations as an attorney” in connection with the 2020 Presidential election, the New York City Bar Association has released a [statement](#) supporting a Grievance Committee investigation in connection with professional disciplinary complaints regarding Mr. Giuliani’s conduct, and explaining in detail how the process works in New York State.

In the statement, the City Bar describes two complaints currently working their way through the process, one by Michael Miller, a past President of the New York State Bar Association and the New York County Lawyers’ Association, along with other current and past Bar leaders from throughout New York State, and another brought by the non-partisan organization Lawyers Defending American Democracy.

“The complaints against Mr. Giuliani allege serious misconduct,” the City Bar states. “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.’ These allegations require a serious investigation, a hearing, and, if the allegations are substantiated, the imposition of appropriate discipline.”

New York’s Disciplinary Process

The City Bar’s statement explains that in New York, the court system handles attorney licensing and discipline, not bar associations as in many other states. The process involves multiple stages of review: screening, investigation, disciplinary proceeding/hearing and appellate court review.

The proceedings are strictly confidential and are not open to the public. 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.

Complaints are filed with the Attorney Grievance Committee (AGC) of New York’s Supreme Court, Appellate Division. The Grievance Committee is not limited to the allegations in the complaint and therefore has the ability to expand the scope and authorize its own investigation. “Discipline is not reserved for situations where the attorney’s misconduct takes place in the courtroom,” the City Bar adds. “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. For instance, in one

recent, highly publicized example a New York attorney was publicly censured for going on a racist rant in a deli.”

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 misconduct occurred in courts of other jurisdictions, the ethical rules applicable in those jurisdictions – and the disciplinary procedures are governed by Part 1240 of New York’s Codes, Rules and Regulations.

If a matter is not dismissed at the screening review stage, the complaint is sent to the attorney against whom the complaint is filed (the “respondent attorney”) for an answer to the allegations. 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.

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.

If a formal disciplinary proceeding is instituted, the respondent attorney is served with a notice of petition and has 20 days to answer. Thereafter, the parties may either reach a resolution of discipline by consent, or conduct a hearing before a referee. 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.” The hearing is conducted in two separate parts including liability (violations of the Rules of Professional Conduct) and sanction (mitigation and aggravation evidence). If a hearing is held, the parties brief the matter, and the referee makes findings of fact and conclusions of law and recommendations to the Appellate Division.

The matter is then presented to the appropriate Appellate Division of the New York court system – in Mr. Giuliani’s case, the First Department – 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. The available public sanctions include censure, suspension and disbarment.

Attorney misconduct is not addressed solely 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.

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. “Thus,” the City Bar writes, “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.”

The City Bar’s statement is signed by the Chairs of its Professional Ethics Committee, Professional Responsibility Committee, Task Force on the Rule of Law, Council on the Profession, and Legal Referral Service Committee.

In supporting the disciplinary proceedings, the City Bar states that 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” and that it supports “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.”

Read the full statement here: <https://bit.ly/3q9ny5F>

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.

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