Giuliani Disciplinary Proceedings (suspension in New York State pending further proceedings; recommendation for disbarment in the District of Columbia)

In New York: "The Attorney Grievance Committee [AGC] moves for an order…immediately suspending respondent from the practice of law based upon claimed violations of rules 3.3(a); 4.1; 8.4(c) and 8.4(h) of the Rules of Professional Conduct (22 NYCRR 1200.0) (Rules of Conduct or RPC)."
…

"Only uncontroverted claims of professional misconduct may serve as a basis for interim suspension on this motion. In connection with its claim that uncontroverted attorney misconduct has occurred, the AGC relies upon the following provisions of the New York Rules of Professional Conduct:

- rule 3.3 which provides that: "(a) A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal . . . ."
- rule 4.1 which provides that: "In the course of representing a client, a lawyer shall not knowingly make a false statement of fact or law to a third person," and
- rule 8.4 "A lawyer or law firm shall not: . . . (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation, . . . or (h) engage in any other conduct
  that adversely reflects on the lawyer's fitness as a lawyer."

…

"[W]e conclude that there is uncontroverted evidence that respondent communicated demonstrably false and misleading statements to courts, lawmakers and the public at large in his capacity as lawyer for former President Donald J. Trump and the Trump campaign in connection with Trump's failed effort at reelection in 2020. These false statements were made to improperly bolster respondent's narrative that due to widespread voter fraud, victory in the 2020 United States presidential election was stolen from his client. *We conclude that respondent's conduct immediately threatens the public interest and warrants interim suspension from the practice of law*…" [Emphasis added.]

In the District of Columbia: "Disciplinary Counsel proved by clear and convincing evidence that Mr. Giuliani violated Rules 3.1 and 8.4(d)...He violated Pennsylvania Rule 3.1 by filing a lawsuit seeking to change the result of the 2020 presidential election when he had no factual basis, and consequently no legitimate legal grounds, to do so. His prosecution of the lawsuit also seriously undermined the administration of justice and violated Pennsylvania Rule 8.4(d)...Respondent's frivolous lawsuit attempted

unjustifiably and without precedent to disenfranchise hundreds of thousands of Pennsylvania voters, and ultimately sought to undermine the results of the 2020 presidential election. He claimed massive election fraud but had no evidence of it. *By prosecuting that destructive case Mr. Giuliani, a sworn officer of the Court, forfeited his right to practice law. He should be disbarred.*" [Emphasis added.]

Ellis Censure Proceeding in Colorado

From the March 8, 2023 "Opinion Approving Stipulation To Discipline": "In November and December 2020, while serving as a senior legal advisor to the then-President of the United States and as counsel for his reelection campaign, Ellis made misrepresentations on national television and on Twitter regarding the 2020 presidential election. *Through this conduct, Ellis violated Colo. RPC 8.4(c) (it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation).*" [Emphasis added.]

Respondent agrees she made the following ten misrepresentations:

- On November 13, 2020, Respondent claimed that "Hillary Clinton still has not conceded the 2016 election."
- On November 20, 2020, Respondent appeared on Mornings with Maria on Fox Business and stated: "We have affidavits from witnesses, we have voter intimidation, we have the ballots that were manipulated, we have all kinds of statistics that show that this was a coordinated effort in all of these states to transfer votes either from Trump to Biden, to manipulate the ballots, to count them in secret . . ."
- On November 20, 2020, Respondent appeared on Spicer & Co. and stated, "with all those states [Nevada, Michigan, Pennsylvania, Wisconsin, Georgia] combined we know that the election was stolen from President Trump and we can prove that."
- On November 21, 2020, Respondent stated on Twitter under her handle @JennaEllisEsq., " . . . SECOND, we will present testimonial and other evidence IN COURT to show how this election was STOLEN!"
- On November 23, 2020, Respondent appeared on The Ari Melber Show on MSNBC and stated, "The election was stolen and Trump won by a landslide."
- On November 30, 2020, Respondent appeared on Mornings with Maria on Fox Business and stated, "President Trump is right that there was widespread fraud in this election, we have at least six states that were corrupted, if not more, through their voting systems. . . We know that President Trump won in a landslide." She also stated, "The outcome of this election is actually fraudulent it's

wrong, and we understand than when we subtract all the illegal ballots, you can see that President Trump actually won in a landslide."

- On December 3, 2020, Respondent appeared on Mornings with Maria on Fox Business and stated, "The outcome of this election is actually fraudulent it's wrong, and we understand than when we subtract all the illegal ballots, you can see that President Trump actually won in a landslide."
- On December 5, 2020, Respondent appeared on Justice with Judge Jeanine on Fox News and stated, "We have over 500,000 votes [in Arizona] that were cast illegally . . ."
- On December 15, 2020, Respondent appeared on Greg Kelly Reports on Newsmax and stated, "The proper and true victor, which is Donald Trump . . ."
- On December 22, 2020, Respondent stated on Twitter, through her handle @JennaEllisEsq, "I spent an hour with @DanCaplis for an in-depth discussion about President @realDonaldTrump's fight for election integrity, the overwhelming evidence proving this was stolen, and why fact-finding and truth—not politics—matters!"

"The parties agree that by making these misrepresentations, Respondent violated Colo. RPC 8.4(c), which provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

"With these authorities in mind, the Court turns to the parties' stipulation. Respondent and the People agree that Respondent made ten misrepresentations on Twitter and to nationally televised audiences in her capacity as personal counsel to the then-President of the United States and as counsel for his reelection campaign. The parties agree that Respondent made these statements, which violated Colo. RPC 8.4(c), with at least a reckless state of mind. The parties agree that Respondent was not counsel of record in any lawsuits challenging the 2020 election results. The parties agree that Respondent, through her conduct, undermined the American public's confidence in the presidential election, violating her duty of candor to the public. Finally, the parties agree that two aggravators apply—Respondent had a selfish motive and she engaged in a pattern of misconduct—while one factor, her lack of prior discipline, mitigates her misconduct."

Clark Disciplinary Proceeding in the District of Columbia

While serving as Acting Assistant Attorney General for the Civil Division of the Department of Justice at the end of Trump's term in office, Clark created a "Proof of Concept" letter." The letter "...was addressed to the Georgia Governor, Speaker of the House, and President Pro Tempore of the Senate. It recommended that the Governor call the Georgia legislature into special session and argued that if the Governor refused to do so, the legislature had the authority to convene such a session on its own

initiative. It was drafted to be signed by Mr. Rosen [the Acting Attorney General], Mr. Donoghue [the Deputy Attorney General], and Respondent [Clark]."

> "The Proof of Concept letter stated that the Department of Justice had 'identified significant concerns that may have impacted the outcome of the election in multiple States, including the State of Georgia.' *This statement was false.*The Department was aware of no allegations of election fraud in Georgia that would have affected the results of the presidential election." [Emphasis added.]
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> "The Proof of Concept letter stated that the Department of Justice found "troubling the current posture of a pending lawsuit in Fulton County" and the "litigation's sluggish pace." *This statement was false.* The Department had no involvement in the Fulton County case and was not concerned by its lack of progress." [Emphasis added.]
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> "The Proof of Concept letter stated that the Department of Justice believed "that in Georgia . . . both a slate of electors supporting Joseph R. Biden, Jr., and a separate slate of electors supporting Donald J. Trump, gathered on that day at the proper location to cast their ballots, and that both sets of those ballots have been transmitted to Washington, D.C., to be opened by Vice President Pence." *This statement was misleading.* The Governor of Georgia had certified a slate of electors to the Electoral College pledged to Joseph Biden, and there was no legitimate alternative slate of Georgia electors pledged to Donald Trump." [Emphasis added.]
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> "The Proof of Concept letter stated that the Department of Justice had concluded that the Governor should convene a special session of the Georgia legislature. *This statement was false.* The Department had not made such a determination." [Emphasis added.]
>
> The Proof of Concept letter stated that the Department had concluded that if the Governor refused to convene a special session of the Georgia legislature, the legislature had the authority to do so on its own initiative. *This statement was false.* The Department had made no such determination. [Emphasis added.]

"Respondent's conduct in Count I violated the following District of Columbia Rules of Professional Conduct:

> a. Rules 8.4(a) and (c), in that Respondent attempted to engage in conduct involving dishonesty, by sending the Proof of Concept letter containing false statements; and
>
> b. Rules 8.4(a) and (d), in that Respondent attempted to engage in conduct that would seriously interfere with the administration of justice.

Eastman Disciplinary Proceeding in California

“As a result of information received from credible sources and numerous court rulings, by no later than on or about December 9, 2020, respondent knew, or was grossly negligent in not knowing, that there was no evidence upon which a reasonable attorney would rely of election fraud or illegality that could have affected the outcome of the election, and that there was no evidence upon which a reasonable attorney would rely that the election had been “stolen” by the Democratic Party or other parties acting in a coordinated conspiracy to fraudulently “steal” the election from Trump.

“Nevertheless, from on or about December 9, 2020, and continuing to at least on or about January 6, 2021, respondent continued to work with Trump and others to promote the idea that the outcome of the election was in question and had been stolen from Trump as the result of fraud, disregard of state election law, and misconduct by election officials. In doing so, *respondent violated his obligations as an attorney in two ways. First, he provided legal advice, formulated legal strategies, and engaged in litigation based on, and made public statements propounding, allegations of election fraud that he knew, or was grossly negligent in not knowing, were false. Second, based on misinterpretations of historical sources, misinterpretations of law review articles, and law review articles that he knew or was grossly negligent in not knowing were themselves fundamentally flawed, he provided, and proposed actions based on, legal advice regarding the unilateral authority of the Vice President to disregard or delay the counting of electoral votes that he knew, or was grossly negligent in not knowing, was contrary to and unsupported by the historical record and established legal authority and precedent*, including the Electoral Count Act and the Twelfth Amendment, such that no reasonable attorney with expertise in constitutional or election law would have concluded that the Vice President was legally authorized to take the actions respondent proposed.” [Emphasis added.]

Excerpts from Michigan District Court Opinion imposing sanctions in “Kraken” litigation

“...attorneys have an obligation to the judiciary, their profession,and the public (i) to conduct some degree of due diligence before presenting allegations as truth; (ii) to advance only tenable claims; and (iii) to proceed with a lawsuit in good faith and based on a proper purpose. Attorneys also have an obligation to dismiss a lawsuit when it becomes clear that the requested relief is unavailable.

“This matter comes before the Court upon allegations that Plaintiffs’ counsel did none of these things. To be clear, for the purpose of the pending sanctions motions, the Court is

neither being asked to decide nor has it decided whether there was fraud in the 2020 presidential election in the State of Michigan.

Rather, the question before the Court is whether Plaintiffs' attorneys engaged in litigation practices that are abusive and, in turn, sanctionable. The short answer is yes. The attorneys who filed the instant lawsuit abused the well-established rules applicable to the litigation process by proffering claims not backed by law; proffering claims not backed by evidence (but instead, speculation, conjecture, and unwarranted suspicion); proffering factual allegations and claims without engaging in the required prefiling inquiry; and dragging out these proceedings even after they acknowledged that it was too late to attain the relief sought. **And this case was never about fraud—it was about undermining the People's faith in our democracy and debasing the judicial process to do so.**" [Emphasis in original.]

Excerpts from the 6th Circuit Opinion on Sanctions for Michigan "Kraken" Litigation

"The complaint said the following about Dominion's origins: Smartmatic and Dominion were founded by foreign oligarchs and dictators to ensure computerized ballot-stuffing and vote manipulation to whatever level was needed to make certain Venezuelan dictator Hugo Chavez never lost another election…*But the complaint's allegation that Dominion was founded as part of a Venezuelan conspiracy to commit election fraud was entirely baseless. The district court rightly concluded that this whole raft of allegations was sanctionable.*

"The complaint also alleged that Dominion's voting systems were easy to hack and impossible to audit…*The problem with the complaint's allegations regarding Michigan's voting system, simply enough, is that they concerned different kinds of systems than the one Michigan used.*

"*Plaintiffs' own exhibits thus refuted rather than supported the complaint's allegations about the Dominion system used in Michigan.* And an adequate prefiling inquiry under Rule 11 includes reading every document one plans to file…*Plaintiffs' inquiry as to these allegations was patently inadequate.*

"Plaintiffs' counsel sought to bolster their theories about Dominion with two putative expert reports. Attorneys are rarely sanctioned for relying upon experts: expert testimony by definition rests on "specialized knowledge[,]" Fed. R. Evid. 702, and consulting an expert is itself a way to investigate a claim's factual plausibility. But there

is no Rule 702 exception to Rule 11; an attorney's reliance upon a putative expert opinion must itself meet the standard of reasonableness imposed by Rule 11. That means the expert's opinion must not be unreliable on its face—either because of the expert's lack of qualifications, or the substance of the opinionitself. And the attorney cannot misrepresent what the expert himself actually says.

"Here, as to the alleged international conspiracy, the complaint alleged that "Dominion software was accessed by agents acting on behalf of China and Iran in order to monitor and manipulate elections." Compl. ¶17. The sole basis for that allegation was the report of what the complaint called a "former electronic intelligence analyst with 305th Military Intelligence with experience gathering SAM missile system electronic intelligence." Compl. ¶17. But *that "intelligence analyst" turned out to be a Dallas IT consultant who dropped out of an entry-level intelligence course after seven months' training. And even a cursory review of his putative report shows that it concerned the integrity of Dominion's public website, not its voting machines. That distinction should not have been hard for counsel to keep straight.*" [Emphasis added.]

Excerpts from Michigan Disciplinary Proceeding against Kraken Lawyers

From the complaint, the basis for Michigan Attorney Grievance Commission having taking jurisdiction over lawyers not admitted to practice in Michigan:

"Respondents Haller, Johnson, Powell, Newman, Kleinhendler, and Wood are subject to the jurisdiction of the Attorney Discipline Board pursuant to Michigan Rule of Professional Conduct 8.5(a)." [Followed by footnote 1, which cites MRPC 8.5(a), which " states in relevant part that, 'A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in th.is jurisdiction.'"

"Respondents Haller, Johnson, Powell, Newman, Kleinhendler, and Wood are further subject to the jurisdiction of the Attorney Discipline Board pursuant to the local rules of the United States District Court for the Eastern District of Michigan, specifically L.R. 83.20(j). [Followed by Footnote 2, which states that 83.20(j) provides that "an attorney who practices in the Eastern District [of Michigan], 'is subject to the Rules of Professional Conduct adopted by the Michigan Supreme Court, as amended from time to time, and consents to the jurisdiction of this court and the Michigan Attorney Grievance Commission and Michigan Attorney Discipline Board for purposes of disciplinary proceedings.'"

Note: The Michigan RPC 8.5(a) echoes ABA Model Rule 8.5(a) (Rule 8.5: Disciplinary Authority; Choice of Law), which states that "(a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

MRPC rules invoked as basis for charges for alleged unprofessional conduct in Michigan election litigation by Trump lawyers:

"By reason of the conduct described above in this Formal Complaint, Respondents have committed the following misconduct and are subject to discipline under MCR 9.104 as follows: a) bringing or defending a proceeding, or asserting or controverting an issue therein, where the basis for doing so is frivolous, in violation of MRPC 3.1; b) engaging in conduct that is prejudicial to the administration of justice, in violation of MRPC 8.4(c) and MCR 9.104(1); c) engaging in conduct that exposes the legal profession or the court to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2); and, d) engaging m conduct that is contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3)"