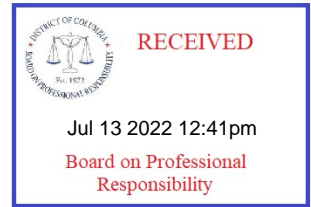


**DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY**



In the Matter of

Rudolph W. Gullant,

Respondent

**A Temporarily Suspended Member of the Bar
of the District of Columbia Court of Appeals.
Bar Number: 237255**

Disciplinary Docket No.

DDN 2020-D253

ANSWER TO SPECIFICATION OF CHARGES

ANSWERING NATURE OF THE CHARGES

The preamble states a legal conclusion to which no response is required. Respondent, however, admits that the disciplinary proceedings instituted by the petition are based on allegations that Respondent violated Pennsylvania Rules of Professional Conduct, Rules 3.1 and 8.4 (d). Respondent denies that he violated these rules.

JURISDICTION

- 1. Respondent admits that Jurisdiction for the Disciplinary Proceeding is proper and admits the allegations contained in paragraph 1 except denies the legal conclusion that Respondent violated standards based on his conduct.**
- 2. Admits the allegations contained in the first sentence of paragraph 2. Respondent admits that it was reported that President Biden carried Pennsylvania by more than 80,000 votes but takes issue with that result.**
- 3. Respondent admits the allegations contained in paragraph 3 to the extent that he was the attorney of record in opposing the motion to dismiss the First Amended Complaint and the attorney of record on the proposed Second Amended Complaint.**
- 4. Respondent admits the allegations contained in paragraph 4 in so far as Respondent did not challenge the November 3, 2020 presidential election results in the Commonwealth of Pennsylvania state court pursuant to state statutory procedures for election contests, but based the constitutional claims on violations of Pennsylvania statutes and the constitution. Respondent lacks information sufficient to form a belief as to the truth or falsity of the**

allegations contained in paragraph 4 as attributed to Plaintiffs, Lawrence Roberts and David John Henry. Respondent notes that the Trump Campaign filed other lawsuits challenging the election under Pennsylvania Law.

- 5. Respondents Admits the allegations contained in paragraph 5, but notes that the failure of Pennsylvania to adhere to its constitution and statutes was a violation of due process.**

ANSWERING PROCEDURAL HISTORY

- 6. Respondent admits the allegations contained in paragraph 6 except Respondent lacks sufficient information to form a belief as the truth or falsity that the boards of elections of the various counties were bipartisan.**
- 7. Respondent admits the allegations contained in paragraph 7.**
- 8. Respondent admits the allegations contained in paragraph 8.**
- 9. Respondent admits the allegations contained in paragraph 9.**
- 10. Respondent admits the allegations contained in the preamble of paragraph 10 and in subsections a-d.**
- 11. Respondent admits the allegations contained in paragraph 11.**
- 12. Respondent admits the allegations contained in paragraph 12.**
- 13. Upon information and belief, Respondent believes that the allegations in the first two sentences of paragraph 13 are true, but takes issue with the result that the Biden margin of victory was 80,535 and therefore denies that allegation.**
- 14. Respondent admits the allegations contained in paragraph 14.**
- 15. Respondent admits the allegations contained in paragraph 15 a that the Supreme Court of Pennsylvania in a 4-3 decision (241 A.3d 1058) reversed the Commonwealth Court.
Respondent admits that the allegations in paragraph 15 b.
Respondent admits the allegation contained in paragraph 15 c that the Supreme Court of Pennsylvania in 241 A.3d 339 reversed the decision of Hon. Christine Fizzano Cannon of the Commonwealth Court of Pennsylvania (2020 WL 6551316) who found that the inability of Republicans to meaningfully observe the canvassing of the mail-in-ballots rendered the election procedure meaningless.**

ANSWERING THE EXTRAORDINARY RELIEF SOUGHT BY

RESPONDENT

16. The Respondent neither admits or denies the allegations contained in paragraph 16 a-f, but refers to the original, first amended and second amended complaints for the relief sought therein. The Respondent denies that relief sought was extraordinary and notes that Plaintiffs in the original and first amended complaint sought "All other further relief to which Plaintiffs might be entitled" and in the second amended complaint sought "Any and other such further relief that this Court deems equitable and just or to which Plaintiffs might be entitled" which would include a new election or other relief.

As to section d, Respondent notes that subsequently in *Mclinko v. Commonwealth of Pennsylvania*, 270 A.3d 1243 (2022), the Pennsylvania Supreme Court held that the statutes establishing that any qualified elector may vote by mail without having to demonstrate a valid reason for their absence from their polling place on Election Day violated state the constitution's provision that required electors to vote in-person at their designated polling place on Election Day, since state constitution allowed requirement of in-person voting to be waived only when an elector was absent for reasons of occupation, physical incapacity, religious observance, or election day duties, but statutes governing the no-excuse mail-in voting system did not fall under any of the constitutionally enumerated exceptions to allow absentee voting, and a constitutional amendment to end requirement of in-person voting was a necessary prerequisite to establish a no-excuse mail-in voting system.

17. Respondent admits the allegations in paragraph 17.

18. Respondent admits the allegations contained in paragraph 18, but notes that there is no precedent because this was an unprecedented election (see answer to 19) and that there was a good faith basis to seek the invalidation of these ballots as the Pennsylvania Supreme Court, declared that in future elections in-person voting will only be waived and mail-in voting will be limited pursuant to the state constitution only for the exceptions when an elector was absent for reasons of occupation, physical incapacity, religious observance, or election day duties (*Mclinko v. Commonwealth of Pennsylvania*, 270 A.3d 1243 [2022]). The Pennsylvania Supreme Court, while negating a legislative statute, also held that in future elections the statute requiring mail-in ballots to be dated will be mandatory (*In Re Canvass of Absentee and Mail-in Ballots of November 3, 2020 General Election*, 241 A.3d 1058 [2020]: Statutory requirement that absentee or mail-in ballot voter date and sign the voter declaration was not a minor irregularity which could be overlooked and thus, in future elections, the omission of either item would be sufficient, without more, to invalidate the ballot in question). Had the Pennsylvania state constitution and the statute that was extant been enforced in the 2020 Presidential election litigation, then there would have been a massive

invalidation of ballots warranting at the very least a new election. Thus, there was a good faith basis for making these arguments and a valid reason for asking such relief. Therefore, the relief sought and the lawsuit itself were based on solid legal arguments and were not frivolous. As most pundits believed and opined that more Republicans voted in person than Democrats, and that more Democrats mailed in their ballots than Republicans, it was not frivolous to argue that Donald Trump won the legal votes cast if the above referenced statute and constitutional provision were enforced by the courts.

- 19. Admits the allegations contained in paragraph 19, but notes that this was an unprecedented election in terms of mail-in ballots, e.g. in Pennsylvania in the 2020 election, there were 2,653,688 absentee/mail-in ballots cast compared to 266,208 cast in the 2016 election, an increase of 896.85%. Respondent notes that had the legislative rule that dates must be included on mail-in ballots been enforced in 2020, it would have caused a change of the declared winner in a state senate race especially where it was alleged that two counties involved—Allegheny and Westmoreland—treated the lack of date on the mail-in ballots differently (see *Ziccarelli v. Allegheny Co. Bd of Elections*, 2021 WL 101683 *1 [W.D. Pa Jan. 12, 2021]). Respondent also repeats the notes in paragraph 18 in answering the allegations contained in paragraph 19.**

**ANSWERING THE HEADING: RESPONDENT'S ASSERTIONS OF
ELECTION FRAUD TO THE DISTRICT COURT**

- 20. Respondent admits the allegations contained in paragraph 20.**
- 21. Respondent admits the allegations contained in paragraph 21.**
- 22. Respondent admits the allegations contained in paragraph 22, except denies that the relief sought was extraordinary.**
- 23. Respondent admits the allegations contained in paragraph 23 only as to what the District Court asked Respondent and Respondent's reply, but denies the characterization of Respondent's accusation as conclusory.**
- 24. Respondent admits the allegations contained in paragraph 24 and notes that the statement, "this is not a fraud case," only applied to the first amended complaint.**
- 25. Respondent admits the allegations contained in paragraph 25.**
- 26. Respondent denies the allegations contained in paragraph 26.**
- 27. Respondent denies the allegations in the preamble contained in paragraph 27 and denies that respondent misquoted the 2005 Baker- Carter Commission**

on Federal Election Reform. Respondent denies allegations contained in paragraph 27 that alleges the sources cited by Respondent do not support arguments of 2020 election fraud in Pennsylvania. Respondent cited several sources which expressed concerns with mail-in voting as being subject to potential election fraud but denies that these could not, as a categorical matter, be used to support arguments and inferences of election fraud in the 2020 election in Pennsylvania. This is an example of the classical definition of circumstantial evidence. Respondent refers to the 2005 Report of the Baker-Carter Commission of Federal Election Reform ("Report") for the contents of the report and its recommendations. Yet it is noted that the Report stated that voting by mail "raises concerns about privacy, as citizens voting at home may come under pressure to vote for certain candidates, and it increases the risk of fraud... Vote by mail is, however, likely to increase the risk of fraud and of contested elections... where there is some history of troubled elections, or where the safeguards for ballot integrity are weaker... [A]bsentee balloting in other states [other than Oregon] has been one of the major sources of fraud." Oregon was singled out because that state had introduced safeguards to help ensure ballot integrity including signature verification. Still the Commission Report cautions that better precautions are needed to ensure that the return of absentee ballots are not intercepted. Likewise, an October 6, 2012, New York Times article by Adam Liptak, entitled Error and Fraud at Issue as Absentee Voting Rises, maintains that voter fraud is easier via mail. For example, collection of absentee ballots in senior citizen centers and nursing homes are fraught with problems. Liptak writes that these senior voters can be subjected to subtle pressure, outright intimidation, or fraud. The secrecy of their vote is compromised, and their ballots can be intercepted while both coming and going. Liptak further cites that fraud relating to absentee ballots is not limited to the elderly. It is easier to sell and buy votes. Liptak further writes "[t]here is bipartisan consensus that voting by mail, whatever its impact, is more easily abused than other forms." Notably Liptak, like Respondent, quotes the Carter-Baker report as simply concluding that "[a]bsentee ballots remain the largest source of potential voter fraud."

28. Respondent admits the allegation contained in paragraph 28 that physical barriers were employed making observation of the counting of the ballots virtually impossible; admits the allegation contained in subsection a that the Pennsylvania Supreme Court found the boundaries to be allowed as being consistent with state election law reversing the decision of Hon. Christine Rizzano Cannon of the Commonwealth Court of Pennsylvania (2020 WL 6551316) who found that the inability of Republicans to meaningfully observe the canvassing of the mail-in-ballots rendered the election procedure meaningless; lacks information sufficient to form a belief as to the truth or falsity of the allegation contained in subsection d that one or more Republican controlled counties also imposed such boundaries; and otherwise deny the allegations contained in subsection b and c.

29. Respondent denies the allegation contained in paragraph 29 that Respondent should have known the "evidence" he provided relied upon false or faulty statistics and analysis. Denies that Respondent promised but admits that Respondent argued that "statistical analysis will evidence that over 70,000 mail and other mail ballots which favor Biden were improperly counted." The movie, 2,000 Mules, supports this conclusion.

30. Respondent admits the allegations contained in paragraph 30 that he told that district court that he had "300 either affidavits, declarations, or our own statements that we've written down that could prove his allegations of fraud, but otherwise deny the other allegations contained in paragraph 30.

ANSWERING SPECIFICATIONS RELATING TO RESPONDENT'S ASSERTIONS OF CONSTITUTIONAL VIOLATIONS

31. Respondent denies the allegation contained in paragraph 31 that the judicial remedies properly requested were extraordinary and were not a proper extension of law and note that the barriers imposed were in violation of existing Pennsylvania law.

32. Admits the allegation contained in the first sentence of paragraph 32. As to the allegation that Pennsylvania state law neither requires nor prohibits this so called "notice-and-cure" procedure, Respondent notes that the Supreme Court of Pennsylvania in *Democratic Party v. Boockvar*, 238 A.3d 345 at 374 (2020) held that counties were not required to adopt a notice and cure policy of ballots under the Election Code but did not provide direction whether a notice and cure practice was forbidden. Thus, Respondent lacks sufficient information to form a belief to the allegation regarding Pennsylvania state law regarding the "notice and cure" procedure except notes that Pennsylvania state law does not in any way prohibit the remedy requested.

33. Respondent admits the allegation in paragraph 33 that Mr. Henry and Mr. Roberts did not reside in any of the defendant counties. Upon information and belief, Mr. Henry is a resident of Lancaster County and Mr. Roberts is a resident of Fayette County. Upon information and belief, Lancaster County and Fayette County did not allow notice and cure provisions. At the very least, defendants would simply have an argument that Mr. Henry and Mr. Roberts lacked standing or capacity to sue which they did not do, thus waiving the defense of lack of capacity to sue. President Trump would still have standing or capacity as a Plaintiff.

34. Respondent denies the allegations contained in paragraph 34.

35. Respondent admits the allegations contained in paragraph 35 that Respondent argued that the Defendant Counties' use of notice-and-cure violated the Trump Campaign's Equal Protection rights because not every Pennsylvania county adopted this procedure. Respondent denies that the lack of a uniform rule in every Pennsylvania county for curing defects of mail-in ballots in the 2020 election was proper. Secretary Boockvar sent out an email the day prior to the election encouraging counties to allow curing of defective mail in ballots. Judge Brann noted that it was unclear which counties were sent the email or which counties followed the direction to allow curing. Thus, it was reasonable for Respondent to make an equal protection argument before Judge Brann as some counties allowed curing and others did not. (2020 WL 6821992 [M. D. Pa]). We note that without an audit of how many ballots were allowed to be cured and counted for President Biden and how many ballots were not allowed to be cured and were not counted for President Trump, the certainty of the election result could certainly and reasonably be challenged, and Respondent's argument is patently not frivolous on this ground alone. Respondent lacks information sufficient to form a belief as to the truth or falsity of the allegation that the lack of uniformity by the various Pennsylvania counties in applying the notice and cure procedure would have been sufficient to affect the 85,000-vote margin of Biden's victory. Respondent notes that if all of the Pennsylvania constitutional provisions and statutes were enforced in the 2020 election, then the Pennsylvania election result would be in doubt and the Pennsylvania Presidential election result would be erroneous as, inter alia, the 2000 Mules documentary movie demonstrated.

36. Respondent denies the allegations contained in paragraph 36.

37. Respondent lacks information sufficient to form a belief as to the truth or falsity of the allegation contained in paragraph 37.

38. Respondent admits the allegations contained in paragraph 38.

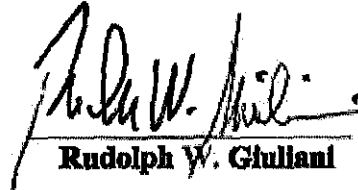
39. Respondent denies the allegations contained in paragraph 39.

40. Respondent denies the allegations contained in paragraph 40. Respondent notes that under Pennsylvania law, counties must admit qualified poll "watchers" to observe votes being tallied (25 Pa. Stat. § 2650[a]). Poll watchers must be registered to vote in the county where they will serve. [§ 2687[b)]. Each candidate can pick two poll watchers per election district: each political party, three (§ 2687[a]). The poll watchers remain at the polling place while election officials count in-person ballots (§ 2687[b]). They can ask to check voting lists. *Id.* And they get to be present when officials open and count all the mail in ballots (§ 3146.8[b]). Likewise, candidates and political parties' "representatives" may be present when absentee and mail-in ballots are inspected, opened, or counted, or when provisional ballots are

examined. (§§ 2602[a.1], [q.1], 3050 [a.4] [4], 3146.8[] [1.1] & [2]; see also § 3050 [a.4] [12]) (emphasis added) (Defining provisional ballots as those cast by voters whose voter registration cannot be verified right away). It is abundantly clear that the purpose of requiring poll watchers and political parties to be present when absentee and mail-in ballots are “inspected, opened, and counted” is to provide these persons with the ability to observe the opening and counting of the ballots in a meaningful way and at a distance where direct observation is possible to ensure the integrity of the particular vote being cast and of the election itself.

- 41. Respondent lacks information sufficient to form a belief as to the truth or falsity of the allegation contained in paragraph 41.**
- 42. Respondent denies the allegations contained in paragraph 42.**
- 43. Respondent denies the allegations contained in paragraph 43. Respondent notes that the process employed was in violation of the Pennsylvania constitution, Pennsylvania statutes including those articulated in the answer to paragraphs 18 and 40.**
- 44. Respondent denies the allegations contained in paragraph 44.**
- 45. Respondent denies the allegations contained in paragraph 45. Respondent notes that Judge Brann did not sanction Mr. Giuliani, nor did he refer Mr. Giuliani to any group that has the authority to discipline Mr. Giuliani, e.g., New York or Washington D.C. (INVST Financial Group Inc. v CHEM-NUCLEAR SYSTEMS, INC., 815 F.2d 391, 401 (6th Cir. 2011) “The 1983 amendment to Rule 11 removed much of the district court’s discretion in imposing sanctions; Rule 11 now mandates the imposition of sanctions if the underlying conduct is found to violate the Rule.. If a district court concludes that Rule 11 has been violated, the court has no discretion and must impose sanctions.”] Despite this strict mandate under Rule 11, Judge Brann, who was in the best position to determine whether the Pennsylvania proceeding was frivolous, made no finding that sanctions were warranted. Neither did Mr. Giuliani’s adversaries seek sanctions from the court, nor did any disciplinary group receive a complaint about Mr. Giuliani regarding his representation of the former President in the Pennsylvania litigation from his adversaries. The absence of any sanctions by Judge Brann, nor any referral for discipline or request for sanctions by Mr. Giuliani’s adversaries in the Pennsylvania litigation is telling. An examination of the criteria as to whether sanctions should be imposed under Rule 11 of the Federal Rules of Civil Procedure is most instructive here. “The conduct of counsel that is the subject to sanctions must be measured by an objective standard of reasonableness under the circumstances.” *Century Prods., Inc. v. Sutter*, 837 F.2d 247, 250-251 (6th Cir. 1988). (“What constitutes a reasonable inquiry may depend on such factors as the time available to the signor for**

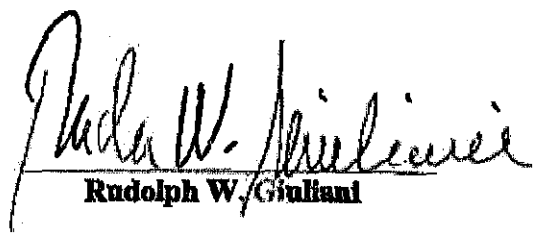
investigation; whether the signor had to rely on a client for information as to the facts underlying the pleading, motion, or other paper; whether the pleading, motion, or other paper was based on a plausible view of the law; or whether the signor depended on forwarding counsel or another member of the bar. Fed.R.Civ.P. 11 Advisory Committee's Note to the 1983 Amendment. ...'[T]he court is expected to avoid using the wisdom of hindsight and should test the signor's conduct by inquiring what was reasonable to believe at the time the pleading, motion, or other paper was submitted.' " *INVST*, 815 F.2d at 401 (quoting Fed.R.Civ.P. 11 Advisory Committee's Note to the 1983 Amendment); *Eavenson*, 775 F.2d at 540. The conduct of counsel that is the subject of sanctions must be measured by an objective standard of reasonableness under the circumstances. *INVST*, 815 F.2d at 401; *Westmoreland v. CBS, Inc.*, 770 F.2d 1168, 1177 (D.C.Cir.1985); *Davis v. Veslan Enters.*, 765 F.2d 494, 497 (5th Cir.1985); *Eastway Constr. Corp. v. City of New York*, 762 F.2d 243, 253-54 (2d Cir.1985)."


Rudolph W. Ghullani

VERIFICATION

STATE OF NEW YORK)
 :SS
COUNTY OF NEW YORK)

I, Rudolph W. Giuliani, being sworn, say: I am the Respondent in the within disciplinary proceeding; I have read the foregoing Answer to the Specification of Charges and know the contents thereof; and the same is true to the best of my knowledge and understanding, except as to the matters therein alleged upon information and belief, and as to those matters, I believe them to be true.


Rudolph W. Giuliani

Sworn to before me on July 12, 2022
Alexandria Hall, Esq.

Notary Public

STATE OF NEW YORK

My Commission Expires 6/27/2024


Notary Public