July 7, 2023

Mr. Rudolph W. Giuliani
c/o John M. Leventhal, Esquire
Barry Kamins, Esquire
judgeleventhal@aidalalaw.com
judgekamins@aidalalaw.com

Re: In re Rudolph W. Giuliani
Board Docket No. 22-BD-027
Disciplinary Docket No. 2020-D253

Dear Mr. Giuliani:

The enclosed copy of the Hearing Committee Report in the above-referenced matter is forwarded to you in accordance with § 9(a) of Rule XI of the Rules Governing the Bar of the District of Columbia.

If you wish to file an objection to the findings or recommendation of the Hearing Committee, please notify this office within ten days of receipt of this letter. In your notice please specify whether your objection will be to the findings or the recommended sanction or both.

If either party notes any objections, the Board will set dates for the submission of briefs and oral argument before the Board. If neither the Respondent nor Disciplinary Counsel objects to the findings or recommendations of the Hearing Committee, the right to submit briefs and be heard in oral argument before the Board will be deemed waived by both parties.

The Board may affirm or modify the recommendation of the Hearing Committee. In the absence of an objection by Respondent or Disciplinary Counsel, the Board will base its decision on the Hearing Committee Report and the available record.

The Board wishes to emphasize that it is not unusual for it to modify the recommendation of the Hearing Committee and to recommend to the Court a different discipline than that which was recommended by the Hearing Committee or Disciplinary Counsel.

Very truly yours,

James T. Phalen
Executive Attorney

JTP:mb

Enclosure

cc (w/encl): Hamilton P. Fox, III, Esquire
Disciplinary Counsel
foxp@dcodc.org

Jason R. Horrell, Esquire
Assistant Disciplinary Counsel
horrellj@dcodc.org

CERTIFICATE OF SERVICE

I hereby certify that on July 7, 2023, I caused to be emailed, a copy of the Report of the Ad Hoc Hearing Committee in Board Docket Number 22-BD-027 / Disciplinary Docket Number 2020-D253 to:

Mr. Rudolph W. Giuliani
c/o John M. Leventhal, Esquire
Barry Kamins, Esquire
judgeleventhal@aidalalaw.com
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and I caused the same to be emailed to:

Hamilton P. Fox, III, Esquire
Disciplinary Counsel
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Jason R. Horrell, Esquire
Assistant Disciplinary Counsel
horrellj@dcodc.org

James T. Phalen
Executive Attorney

THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY
AD HOC HEARING COMMITTEE

In the Matter of:	:	
	:	
RUDOLPH W. GIULIANI,	:	
	:	**Board Docket No. 22-BD-027**
Respondent.	:	**Disciplinary Docket No. 2020-D253**
	:	
A Temporarily Suspended Member of the Bar of the District of Columbia Court of Appeals (Bar Registration No. 237255)	:	

REPORT AND RECOMMENDATION OF AD HOC HEARING COMMITTEE

INTRODUCTION

Disciplinary Counsel charged Respondent Rudolph W. Giuliani with violating Pennsylvania Rules of Professional Conduct 3.1 and 8.4(d), based on his prosecution of a lawsuit in Pennsylvania following the 2020 presidential election.

The hearing in this disciplinary matter took place on December 5-8 and 15, 2022. Former President Donald Trump waived his attorney-client privilege, and Respondent testified at the hearing about all matters relevant to post-election litigation. Tr. 1207.[1]

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1 The hearing transcript is designated as "Tr." Disciplinary Counsel's and Respondent's exhibits are designated "DCX" and "RX," respectively. "FF" indicates our Findings of Fact.

* Consult the 'Disciplinary Decisions' tab on the Board on Professional Responsibility's website (www.dcattorneydiscipline.org) to view any subsequent decisions in this case.

Disciplinary Counsel proved by clear and convincing evidence that Mr. Giuliani violated Rules 3.1 and 8.4(d). *See* Board Rule 11.6; *In re Cater*, 887 A.2d 1, 24 (D.C. 2005). 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).

The right to vote is the "essence of a democratic society." *Reynolds v. Sims*, 377 U.S. 533, 555 (1964). 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.

I. FINDINGS OF FACT

1. Respondent Rudolph W. Giuliani is a member of the Bar of the District of Columbia Court of Appeals, admitted on December 2, 1976 and assigned Bar Number 237255. DCX 01. He took inactive (non-practicing) status on December 12, 2002. DCX 02 at 0001; Respondent's Answer to Specification of Charges at 1. On June 24, 2021, the Supreme Court of the State of New York, Appellate Division, First Judicial Department suspended him pending final disposition of disciplinary proceedings in that jurisdiction. *In re Giuliani*, 146 N.Y.S.3d 226, 283 (App. Div.

2021) (per curiam). On July 7, 2021, the D.C. Court of Appeals suspended him based on the New York action. Order, *In re Giuliani*, D.C. App. No. 21-BG-423 (July 7, 2021).

A. 2020 Election Law in Pennsylvania

2. In 2019, the Commonwealth of Pennsylvania enacted Act 77, which permitted any registered voter to vote by mail upon request. 2019 Pa. Legis. Serv. Act 2019-77 (S.B. 421), sec. 8, § 1301-D; Tr. 552 (Ortiz). The liberalized vote-by-mail procedures, combined with the COVID-19 pandemic, led to an increase in Pennsylvania mail-in ballots from 266,208 in the 2016 election to 2,653,688 in 2020.[2] RX 06 at 4, ¶ 19. In the 2020 general election, more than one third of Pennsylvanians voted by mail. DCX 16 at 0007.

3. To vote by mail, voters were required to apply for a ballot, but did not have to specify a reason for doing so. Once the application was approved the county election board sent the voter a package which contained a ballot and two envelopes: a smaller, "secrecy" envelope marked "Official Election Ballot" and a larger, outer envelope preprinted with a bar code and voter declaration. DCX 17 at 0021; DCX 18 at 0029; DCX 21 at 0009. Voters were instructed to mark their ballot, seal it in the smaller envelope and, in turn, seal that envelope in the larger envelope. *Id.* Voters then filled out, dated, and signed a declaration printed on the larger envelope,

2 *See* U.S. Election Assistance Comm'n, *Election Administration and Voting Survey 2020 Comprehensive Report* i, 34 (Aug. 16, 2021); U.S. Election Assistance Comm'n, *The Election Administration and Voting Survey 2016 Comprehensive Report* 24 (June 29, 2017).

and mailed it or delivered it in person to the county board of election. *Id.* On election day, officials "canvassed" the mail-in ballots to verify that the appropriate information was on the outside of the larger envelope, and that nothing written on the secrecy envelope would reveal the voter's identity, political affiliation, or candidate preference. DCX 17 at 0021. The secrecy ballot was then opened, and the ballot was counted. DCX 18 at 0028-29.

4. Following enactment of Act 77, several lawsuits were filed before the 2020 election to clarify or challenge the new procedures. Tr. 554 (Ortiz). In *Pennsylvania Democratic Party v. Boockvar*, 238 A.3d 345 (Pa. 2020), the Pennsylvania Supreme Court held that if a county election board determined from the outside envelope that a mail-in ballot was deficient – for example, if the voter failed to sign the declaration – the Act did not require the county board to notify the voter and provide an opportunity to correct the mistake ("Notice and Cure"). DCX 17 at 0019-21; Tr. 554-55 (Ortiz); Tr. 134-35 (Giuliani). The Court, on the other hand, did not preclude counties from doing so. Tr. 135 (Giuliani). In the wake of that decision, some counties chose to implement "Notice and Cure"; others did not. DCX 14 at 0009; Tr. 135-36 (Giuliani).[3]

5. In *In re Nov. 3, 2020 Gen. Election*, 240 A.3d 591 (Pa. 2020), the Pennsylvania Supreme Court held that: (a) Act 77 does not permit election boards to compare the signatures on mail-in ballot envelopes with those on voter registration

3 Respondent asserted that the counties that implemented Notice and Cure engaged in an illegal scheme to dilute votes in those counties that chose not to implement the process. *See* FF 47-49, *infra*.

forms; and (b) the Act does not permit partisan election observers to challenge mail-in ballots during the canvassing process. DCX 19 at 0012-13; Tr. 556-57 (Ortiz); Tr. 136-38 (Giuliani).

6. In a case brought by the Trump campaign, *Donald J. Trump for President, Inc. v. Boockvar*, 493 F. Supp. 3d 331 (W.D. Pa. 2020), the U.S. District Court for the Western District of Pennsylvania held that the campaign lacked standing to challenge various Pennsylvania election procedures on a vote dilution theory, which included challenges based on the Electors and Election Clauses of the U.S. Constitution. DCX 18 at 0036-40. In the alternative, the court held that the absence of a signature-comparison process for mail-in ballots did not violate equal protection or substantive due process. DCX 18 at 0052, 0056-60; Tr. 557-561 (Ortiz). The campaign did not appeal that decision. DCX 08 at 0053.

7. On election day, to implement pandemic-compelled social distancing between election workers canvassing mail-in ballots and partisan observers, county election officials erected observational barriers tailored to the physical layouts of individual canvassing sites. DCX 20 at 0003. The Trump campaign objected to the barriers in Philadelphia, but a state trial court denied its request to allow its observers closer access. An intermediate appellate court reversed that decision, (RX 16 at 3 (*In re Canvassing Observation*, No. 1094, 2020 WL 6551316, at *4 (Pa. Commw. Ct. Nov. 5, 2020)); Tr. 562-63 (Ortiz)), but on further appeal the Pennsylvania Supreme Court approved the barrier placements, holding that "the Election Code does not specify minimum distance parameters for the location" of observers.

DCX 20 at 0009 (*In re Canvassing Observation*, 241 A.3d 339, 351 (Pa. 2020)); Tr. 141-47 (Giuliani); Tr. 563-64 (Ortiz). In the interim, a federal judge worked out an informal settlement to allow observers in Philadelphia closer proximity to canvassing operations. Tr. 564-65 (Ortiz).

B. Post-Election Trump Litigation

8. President Biden won Pennsylvania by a margin of more than 80,000 votes. DCX 22 at 0001-02.

9. The day after the election, November 4, 2020, then-President Trump asked Mr. Giuliani to take charge of post-election litigation challenging the voting results. Tr. 42-43, 45, 481-82, 877-78 (Giuliani). Mr. Giuliani went to a war room in Arlington, Virginia where he immediately met with other attorneys to prepare to bring litigation in approximately ten states (including Pennsylvania). Tr. 483-84 (Giuliani). He intended all of those cases to raise similar claims so they could be consolidated in a single lawsuit that would eventually be heard in the U.S. Supreme Court. Tr. 42-46, 49, 53-54, 483-84, 879, 1188-1190 (Giuliani).

10. The litigation team working for Respondent included multiple attorneys as well as Bernard Kerik (formerly Police Commissioner of New York City (Tr. 812-13 (Kerik))), whom Respondent engaged as chief investigator. Tr. 457 (Giuliani); Tr. 800 (Bobb); Tr. 821-22, 824-25 (Kerik). Mr. Kerik was asked to coordinate efforts to find evidence of voting improprieties or fraud. Tr. 824-29, 854 (Kerik). In addition, Respondent engaged John Droz (who described his career as "trying to

defend science" (Tr. 752-55 (Droz)) to assemble statistical models testing the "legitimacy" of the election. Tr. 758-60, 764, 769-770 (Droz).

11. Mr. Giuliani started to work on litigation specific to Pennsylvania after receiving a telephone call complaining about observational boundaries in Philadelphia during the mail-in ballot canvassing there. Tr. 46-47, 49, 882-86 (Giuliani); Tr. 740-42 (Lewandowski).

12. Election challenges based on state law were required to be brought in state court. Tr. 52-54, 513-16 (Giuliani); DCX 40 at 0006 & n.2. The campaign had lost other cases in the state courts, and local counsel "felt it was a lost cause" to bring post-election challenges there. Tr. 515 (Giuliani). Respondent consequently worked with Pittsburgh attorney Ronald Hicks to prepare a case to be filed in Pennsylvania federal court. DCX 34 at 0141-42; *see* DCX 05 at 0084; Tr. 51-53, 486-88 (Giuliani).

13. Mr. Giuliani helped draft a complaint on behalf of Donald J. Trump for President, Inc. and on behalf of two individual voters who had mailed defective ballots but had not been given the opportunity to cure them. DCX 05; Tr. 55-56 (Giuliani). The complaint contained seven counts asserting violations of the plaintiffs' civil rights under 42 U.S.C. § 1983 and the Electors and Elections Clauses of the U.S. Constitution. It named as defendants the Pennsylvania Secretary of State and the election boards of seven counties that had returned majorities for President Biden. DCX 05 at 0001, 0011; Tr. 56-57 (Giuliani); Tr. 566 (Ortiz).

14. The initial Complaint was filed on November 9, 2020, in the Middle District of Pennsylvania. DCX 05 at 0001; Tr. 59 (Giuliani); Tr. 566 (Ortiz). Even though he drafted a meaningful portion (up to 30%) of it, Mr. Giuliani was not admitted to practice in the Middle District and did not sign it. Tr. 57, 59, 489, 899 (Giuliani); *see* DCX 07.

15. Mr. Hicks withdrew his appearance immediately after filing the Complaint. DCX 09 at 0003; Tr. 61-62 (Giuliani). On November 15, 2020, plaintiffs filed a First Amended Complaint authored by another group of lawyers; it eliminated all but two of the seven original counts. DCX 06; Tr. 61, 490 (Giuliani). Mr. Giuliani did not work on that complaint and did not agree with its more circumscribed approach. Tr. 60-63 (Giuliani).

16. The court admitted Mr. Giuliani *pro hac vice* on November 17, 2020. DCX 07 at 0002. That same day, he personally argued in opposition to a motion to dismiss the First Amended Complaint. DCX 08. By that time, Mr. Giuliani had prepared a Second Amended Complaint. Tr. 71-72 (Giuliani). He believed that the First Amended Complaint wrongly deleted allegations about widespread election fraud that were important to his national litigation strategy. Tr. 64-68 (Giuliani). During the oral argument, he advised District Judge Matthew Brann that he intended to file another complaint. DCX 08 at 0013; Tr. 71-72 (Giuliani).

17. The day after the oral argument, Mr. Giuliani moved for leave to file the Second Amended Complaint, which reintroduced allegations from the original Complaint and added additional counts, all of which were based either on 42 U.S.C.

§ 1983 or on the Due Process or Electors and Elections Clauses. DCX 09 at 0001-04; Tr. 491 (Giuliani). At the core of the additional counts were plaintiffs' claims of systemic election fraud arising from the establishment of observational boundaries. DCX 09 at 0110-0122. The next day, November 19, 2020, plaintiffs sought a temporary restraining order barring defendants from certifying the result of the 2020 election. DCX 10; DCX 11; Tr. 569 (Ortiz).

18. On November 21, 2020, Judge Brann dismissed the First Amended Complaint and denied leave to file the Second Amended Complaint. He also denied plaintiffs' request for injunctive relief. DCX 14 at 0017 (*Donald J. Trump for President, Inc. v. Boockvar*, 502 F. Supp. 3d 899, 923 (M.D. Pa. 2020)).

19. Plaintiffs filed a Notice of Appeal on November 22, 2020, signed by Mr. Giuliani. DCX 15. The only issue raised on appeal was whether Judge Brann properly denied leave to file the Second Amended Complaint. DCX 16 at 0005; Tr. 594 (Ortiz).

20. The Third Circuit affirmed dismissal of the case. DCX 16 at 0005 (*Donald J. Trump for President, Inc. v. Sec'y of Pennsylvania*, 830 Fed. Appx. 377, 382 (3d Cir. 2020)). The court held that the Second Amended Complaint did not contain a sufficient factual basis to state a facially plausible claim to relief. DCX 16 at 0008.

C. The Giuliani Complaints Were Factually Deficient

21. The Complaint and Second Amended Complaint ("Giuliani Complaints") challenged the location of observational barriers and the existence of

Notice and Cure procedures, but neither complaint factually linked either of those circumstances to widespread improper voting. *See generally* DCX 05; DCX 09. They contained only vague and speculative allegations about random and isolated electoral irregularities which did not and could not support Respondent's inflated legal claims. *See* ODC Proposed Finding of Fact ("PFF") 34 (listing the 26 factual allegations in the two complaints); ODC Reply Br. at 4-5.[4]

22. For that reason, the District Court found that plaintiffs had presented only "strained legal arguments without merit and speculative accusations, unpled in the operative complaint and unsupported by evidence." DCX 14 at 0008 (502 F. Supp. 3d at 906).

23. The Third Circuit agreed, holding that the Second Amended Complaint:

> never alleges that any ballot was fraudulent or cast by an illegal voter. It never alleges that any defendant treated the Trump campaign or its votes worse than it treated the Biden campaign or its votes. Calling something discrimination does not make it so.

DCX 16 at 0012 (830 Fed. Appx. at 391).

D. Respondent's Oral Argument to the District Court

24. When Mr. Giuliani opposed the motion to dismiss before Judge Brann, the First Amended Complaint was in effect. It had eliminated claims that were based on observational barriers and fraud. Tr. 60, 71, 490 (Giuliani). *Compare* DCX 05,

4 "Disciplinary Counsel has never disputed whether Mr. Giuliani had some basis . . . to allege the scattering of minor election improprieties . . . . The question is not whether the allegations of the complaints had some factual basis, but whether those facts, assuming them to be true, supported the legal claims alleged in the complaints." ODC Reply Br. at 5.

with DCX 06. Mr. Giuliani, however, had already drafted the Second Amended Complaint reasserting that observational barriers and Notice and Cure practices had caused widespread fraud. Tr. 71-72, 944 (Giuliani). He justified the amendment "because as compared to last week, we have twice as much evidence this week." DCX 08 at 0022; *see* DCX 09 at 0001 (seeking leave to add claims in a second amended complaint "based on newly learned facts").

25. Mr. Giuliani's oral argument for the most part elaborated on the observational boundary fraud claims of his Second Amended Complaint. DCX 08 at 0012-18; Tr. 71-73 (Giuliani); Tr. 582-86 (Ortiz).

26. The Pennsylvania Supreme Court, in *In re Canvassing Observation*, 241 A.3d at 346-47, noted that the Election Board in Philadelphia County had established its observational distancing requirements based "on its perceived need for protecting its workers' safety from COVID-19 and physical assault from those individuals who have contact with its workers; ensuring security of the ballots; efficiently processing large numbers of ballots; protecting the privacy of voters; and ensuring campaign access to the canvassing proceedings . . . ." DCX 20 at 0006.

27. Mr. Giuliani, however, contended that observational boundaries were a *per se* fraud that he had "personally witnessed" (Tr. 49 (Giuliani)). He claimed they were "a deliberate scheme of intentional and purposeful discrimination" against the Trump campaign (DCX 09 at 0079-0080, ¶ 167), concluding that Democrats "stole an election . . . in this Commonwealth" (DCX 08 at 0027) and that he had "hundreds

of affidavits" supporting his assertion (DCX 08 at 0027-28). These claims were simply not true.

28. Mr. Giuliani did not offer any evidence that fraudulent mail-in votes were actually cast or counted. Tr. 381-82 (Giuliani); Tr. 593 (Ortiz); DCX 40 at 0013-27; *see* DCX 08. In his view, the existence of observational boundaries was enough: the voter "might not have done anything wrong, but [because of the boundaries] the person counting did something wrong and therefore they're not counted." Tr. 334 (Giuliani). The only evidence he offered to the court were photographs showing that observers could not see the details of ballots at canvassing sites in Philadelphia and Allegheny Counties. DCX 08 at 0029-31. Because canvassing absentee and mail ballots subject to observational boundaries was a "planned fraudulent process," he argued, virtually all of the 682,770 mail-in ballots in Philadelphia and Allegheny counties should not have been counted. *Id.* at 0023-26, 0116-17; *see also* Tr. 383-85, 388-89 (Giuliani). Acknowledging that observational boundaries applied equally to both parties, he rationalized that "Democrats weren't allowed to see it because they couldn't count on the fact that all Democrats are crooked." DCX 08 at 0026-27; *see also* Tr. 194-95 (Giuliani).

29. Mr. Giuliani's observational boundaries theory was premised on a conclusive presumption of irregularity, *i.e.*, the wholly unfounded supposition that observational boundaries necessarily led to fraudulent counting of mail-in ballots to favor President Biden. *See* DCX 05 at 0070 ("Consequently, Defendants created a system whereby it was physically impossible for the candidates and political parties

to view the ballots and verify that illegally cast ballots were not opened and counted."); DCX 09 at 0080 ("Defendant County Election Boards carried out this scheme knowing that the absentee and mail ballots which should have been disqualified would overwhelmingly favor Biden . . . ."); *id.* at 0088 (same). While the number of Democrats voting by mail was expected greatly to surpass the number of Republicans voting by mail, nothing in the record supports Respondent's thesis that the observational barriers were put in place to avoid detection of a scheme illegally to count Biden votes.

30. The day that Mr. Giuliani made his oral argument, the Pennsylvania Supreme Court held that the observational boundaries did not violate the election code. DCX 20 at 0009 (*In re Canvassing Observation*, 241 A.3d at 351).

31. Distinct from the observational boundaries claim, Mr. Giuliani's Notice and Cure claim was lodged on behalf of two individuals who had mailed in defective ballots that were properly rejected by election officials. DCX 08 at 0019-0020. Rather than seeking to have their votes counted, Mr. Giuliani sued seven other counties that *had* implemented a Notice and Cure process, seeking on an equal protection theory to take away votes in those defendant counties or even "declar[e] a new election." Tr. 187 (Giuliani).

32. Claiming that time constraints precluded him from doing so, Mr. Giuliani's pre-litigation investigation unearthed no evidence of systemic fraud. DCX 08 at 0022-23; Tr. 382 (Giuliani). He briefly visited Philadelphia, and while there focused his attention on the observational boundary restrictions. Tr. 468-475,

1163-1173 (Giuliani). Most of the inspectors with whom he spoke were "in a state of shock" over how the new boundaries differed from practices under prior law. Tr. 1170 (Giuliani); *see also* Tr. 1173, 1199 (Giuliani).[5] None of his interactions, however, unearthed credible proof that observational boundaries or Notice and Cure procedures facilitated widespread fraud. Tr. 234-240, 956-971 (Giuliani).

33. Respondent thus commenced litigation without evidence that its core factual claim was true. He admits as much, maintaining that the "fastmoving" case "did not permit him to investigate fully his client's position as he would normally do in any other case." Respondent's Br. at 2. Even without supporting evidence, he claims, it was reasonable for him to "draw an inference and make an argument that the vote count was illegal and contrary to law." *Id*. at 3. We reject this argument.[6]

34. Despite the lack of proof, Respondent sought an order prohibiting the defendants from counting ballots that had been "cured" and any ballots that had been

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5 The observational boundaries permitted under the new law were also compelled by COVID-19 social distancing considerations. FF 26; Tr. 138-39 (Giuliani). It is not surprising, therefore, that the boundaries created distrust among some veteran (and partisan) poll watchers.

6 Respondent testified that "a complaint is a prediction. It's not a statement of what you definitely are going to get, what you're definitely going to prove." Tr. 390 (Giuliani). He further stated that "[a]ll those questions have to be answered, which you can't answer at this stage of the litigation, so you put out all the allegations you have, the ones that help you, the ones that don't, and then you work your way through it in the litigation." Tr. 192-93 (Giuliani). Compare Respondent's statement with *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), which held that "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face'" (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id*. (citing *Twombly*, 550 U.S. at 555).

pre-canvassed or canvassed without "meaningful observation" from poll watchers. DCX 09 at 0113, 0123. Such a remedy would mean disqualifying all mail-in ballots in the defendant counties. Tr. 178-79 (Giuliani). His complaints sought injunctive relief ranging from a prohibition on certifying the results of the 2020 general election (DCX 05 at 0084; DCX 06 at 0062; DCX 09 at 0020, 0122-23; Tr. 577-79 (Ortiz as to DCX 09)) to ordering the Pennsylvania General Assembly to choose the electors (DCX 09 at 0123; Tr. 579-581 (Ortiz)). In his motion for leave to file the Second Amended Complaint, he stated that "[u]ltimately, Plaintiffs will seek the remedy of Trump being declared the winner of the legal votes cast in Pennsylvania . . . and, thus, the recipient of Pennsylvania's electors." DCX 09 at 0008-09; Tr. 576 (Ortiz).

35. Four days after the oral argument, the District Court dismissed the case and denied leave to replead. DCX 14.

36. The chief factual objective of the hearing in this disciplinary matter was to ascertain whether Disciplinary Counsel proved by clear and convincing evidence that Mr. Giuliani lacked material evidence to support his claims that observational boundaries and Notice and Cure procedures facilitated widespread, systemic voter fraud and justified the nullification of hundreds of thousands of votes in Pennsylvania. The hearing clearly and convincingly disclosed that there was no such evidence: Respondent based the Pennsylvania litigation only on speculation, mistrust, and suspicion.

E. Observational Boundaries Did Not Facilitate Systemic Election Fraud

37. The record of this disciplinary proceeding includes: (a) all documents in the possession of Mr. Hicks's firm (DCX 23 & 24); (b) all documents in the possession of Linda Kerns, who signed the Complaint (DCX 05 at 0084-85) and the First Amended Complaint (DCX 06 at 0063) (DCX 25 & 26); (c) all documents in the possession of the law firm that authored the Second Amended Complaint (DCX 09 at 0124) (DCX 27 & 28); (d) all documents in the possession of Mr. Giuliani (DCX 32, 35, 36, 37; Tr. 506-510 (Giuliani)); and (e) the transcript of a Pennsylvania legislative hearing in which Mr. Giuliani participated on November 25, 2020 (DCX 29), which, he claimed, demonstrated "a pattern in Pennsylvania of so many gross irregularities that . . . presents a very solid evidentiary base, direct and circumstantial, supporting responsible allegations of voter fraud." DCX 32 at 0002.

38. At the hearing in this case Mr. Giuliani belatedly produced another set of declarations and affidavits, RX 01, along with some emails and text messages, RX 02. Tr. 85-86 (Giuliani). His testimony raised the possibility that some relevant materials may have been lost or not turned over, but the only "missing" document he could think of was already included in his document production, albeit without an unknown number of affidavits he "thought" were attached to it. Tr. 90-94, 210-14 (Giuliani); DCX 32 at 0072-75. He subsequently testified that there might be other missing documents but, if so, they concerned "an illegal voter, it's one or two." Tr. 298-99 (Giuliani). Between the time Disciplinary Counsel commenced its investigation of Respondent and the hearing in this matter, Mr. Giuliani reached out

to those with whom he had worked and retrieved relevant documents from them which, in turn, he produced to Disciplinary Counsel. Tr. 509-510 (Giuliani).

39. We conclude therefore that the record of the disciplinary hearing contains all the material evidence gathered by Mr. Giuliani, and on his behalf, to support his claims in the Pennsylvania litigation. His nebulous allusions to the existence of additional material documentation are not credible.

40. The documentary evidence that Respondent did produce is fundamentally vague, speculative, or facially incredible. We have reviewed it and have examined with particularity the materials cited by Respondent in his post-hearing filings. Respondent's PFF 36-37. Although the materials identify a handful of isolated election irregularities, they completely fail to demonstrate that the observational boundaries or Notice and Cure procedures facilitated any meaningful fraud or misconduct that could have possibly affected the outcome of the presidential election.

41. At the disciplinary hearing Mr. Giuliani also offered the testimony of Bernard Kerik and John Droz, who produced additional materials purporting to show election fraud. Tr. 751-787 (Droz) (RX 11); Tr. 810-857 (Kerik) (RX 40-43).

42. Mr. Giuliani did not include Mr. Kerik's documents in his responses to Disciplinary Counsel's request for evidence (DCX 32, 35, 36, 37; Tr. 97-98 (Giuliani)) and the three subpoenaed law firms did not produce them. DCX 24, 26, 28. Mr. Giuliani did not mention them in the oral argument before Judge Brann (DCX 08), and Mr. Kerik did not testify at the November 25, 2020 legislative hearing

(DCX 29). At the disciplinary hearing Mr. Giuliani at first said he did not recall if or when he may have seen the Kerik materials (Tr. 98 (Giuliani)), and later testified that he saw them before the oral argument in the District Court but could not attest to their veracity. Tr. 456-460 (Giuliani).

43. Even if Mr. Giuliani did have the Kerik documents at a relevant time (and it does not appear that he did), they do not show any connection between observational boundaries or Notice and Cure procedures and election fraud. Mr. Kerik (like Mr. Giuliani) could not and would not confirm that the information contained in the Kerik documents was true (Tr. 827-29 (Kerik)) and could not identify its sources. Tr. 839-842 (Kerik). The content of the Kerik documents is in many instances facially incredible. Indeed, Respondent did not offer the Kerik materials in evidence at the disciplinary hearing for their truth, and they were not admitted for that purpose. Tr. 920. For these reasons, we conclude that the Kerik exhibits (RX 40-43) have no probative value in this matter and do not support the allegations made by Mr. Giuliani in the Pennsylvania litigation.

44. Mr. Droz, who acknowledged no expertise in statistics, testified about an exhibit containing statistical "analyses" prepared by third parties, none of whom testified in this disciplinary matter. Tr. 759 (Droz); *see* RX 11. Mr. Droz could not and would not attest to the veracity of the exhibit, which Respondent again did not offer into evidence for the truth of its content. Tr. 772-73. Mr. Giuliani knew nothing about the credentials of the exhibit's authors, or about the underlying data they used. Tr. 943-45 (Giuliani). Although he had the exhibit in his possession and

claims to have been impressed with aspects of it (Tr. 906-911 (Giuliani)), he did not submit it to the District Court or rely upon it when making his oral argument. Tr. 944-45 (Giuliani). The Droz exhibit fails to establish any causal connection between observational boundaries or Notice and Cure procedures and election fraud. For these reasons we conclude that the Droz exhibit (RX 11) has no probative value in this matter and does not support the allegations in the Pennsylvania litigation.

F. The Notice and Cure Claim Had No Factual Merit

45. The individual plaintiffs lived in counties that did not adopt Notice and Cure procedures, so defective ballots mailed to those counties were not counted. DCX 05 at 0010 (¶¶ 19 & 20); DCX 06 at 0006-07 (¶¶ 15 & 16), 0058-59 (¶ 158); DCX 09 at 0023-25 (¶¶ 22 & 23), 0096-0103 (Count IV), 0105-109 (Count VI). But Mr. Giuliani did not sue the boards of elections in the counties that disqualified the plaintiffs' ballots and did not seek to have them counted. Tr. 187 (Giuliani).

46. Instead, Respondent sued seven county boards that did offer Notice and Cure to their voters and sought to disqualify the ballots that had been cast in those counties after voters were notified of a defect in their mail-in ballot. DCX 05 at 0001; DCX 06 at 0001; DCX 09 at 0001; DCX 14 at 0011-12; Tr. 176, 187, 495-502, 510-12 (Giuliani).

47. In Mr. Giuliani's view, the divergent Notice and Cure practices among the counties constituted an intentional scheme by the seven counties and the Secretary of State to harm the Trump Campaign. Tr. 76 (Giuliani). However, he produced no evidence to support that claim.

48. In any event, the four most populous defendant counties had an aggregate total of approximately 6,500 Notice and Cure votes. DCX 16 at 0011. Respondent did not dispute that number, nor did he proffer a different one.[7] The Third Circuit held that even if the Notice and Cure votes in the remaining counties brought the total to 10,000 voters (and even assuming they all voted for President Biden), the result of the election would not have changed. *Id.*

49. Mr. Giuliani had no evidence to support a claim that the Notice and Cure procedures affected votes in the defendant counties sufficient to approach President Biden's 80,000-vote victory margin. Tr. 185 (Giuliani). Without such evidence Mr. Giuliani had no legitimate grounds based on Notice and Cure to seek an "injunction that prohibits Defendants from certifying the results of the 2020 presidential general election in Pennsylvania on a statewide basis . . . and/or [an] injunction that the results of the 2020 presidential general election are defective and providing for the Pennsylvania General Assembly to choose Pennsylvania's electors." DCX 09 at 0103-05, 0123.[8]

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7 The Second Amended Complaint predicted that there were 70,000 cured ballots, DCX 09 at 0021, but in truth Mr. Giuliani "had no idea how many – how broad the practice was of [notice and] cure." Tr. 501 (Giuliani); *see* Tr. 168-69 (Giuliani).

8 The Third Circuit described this request for relief as "breathtaking," a "drastic remedy" for which Mr. Giuliani could cite no authority. DCX 16 at 0010.

II. CONCLUSIONS OF LAW

Respondent's conduct took place in connection with a matter pending in the United States District Court for the Middle District of Pennsylvania, which has adopted the Pennsylvania Rules of Professional Conduct. *See* M.D. Pa. L.R. 83.23.2. Disciplinary Counsel therefore charged Respondent with violating Pennsylvania's Rules of Professional Conduct 3.1 and 8.4(d). *See* D.C. Rule of Professional Conduct 8.5(b)(1) ("For conduct in connection with a matter pending before a tribunal, the rules to be applied shall be the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise . . . .").

Pennsylvania Rule 3.1 states in relevant part that "[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, which includes a good faith argument for an extension, modification or reversal of existing law." *See also* D.C. Rule 3.1 (same).

Both the District Court and Third Circuit summarily dismissed Respondent's case, finding that it lacked factual or legal merit. Although suggestive of the result in this disciplinary matter, those decisions do not compel a conclusion that Respondent violated Pennsylvania Rule 3.1. Even though the courts found that Respondent's litigation had no merit, we must determine whether Respondent's deficient claims were also "frivolous."

In that regard, Pennsylvania Rule 3.1 sets forth an objective test. *Adams v. Dept. of Pub. Welfare*, 781 A.2d 217, 220 n.2 (Pa. Commw. Ct. 2001). Both parties

have directed the Hearing Committee to *In re Spikes*, 881 A.2d 1118, 1125 (D.C. 2005) as a guide to our analysis. *Spikes* held that a claim is frivolous if, after undertaking "an 'objective appraisal of merit' . . . , a reasonable attorney would have concluded that there was not even a 'faint hope of success on the legal merits' of the action being considered." 881 A.2d at 1125 (quoting *Tupling v. Britton*, 411 A.2d 349, 352 (D.C. 1980) and *Slater v. Biehl*, 793 A.2d 1268, 1278 (D.C. 2002)).

Spikes recognized that "the law is not always clear and never is static," and that the prohibition of frivolous litigation should not chill zealous advocacy on behalf of a client to press for change and reform in the law. *Id.* (quoting D.C. Rule 3.1, cmt. [1]); *see also* Pa. Rule 3.1, cmt. [1]. However, *Spikes* warned that this "safe harbor" requires a position that is reasoned and supported. *Id.*; *see also* Pa. Rule 3.1, cmt. [1] ("The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure."); D.C. Rule 3.1, cmt. [1] (same).

Rule 3.1 applies to claims for relief as well as to theories of liability: where claims for relief are "utterly frivolous, implausible to the point of having 'not even a faint hope of success,'" they too violate Rule 3.1. *In re Pearson*, 228 A.3d 417, 426 (D.C. 2020) (per curiam) (quoting *Spikes*, 881 A.2d at 1125).

A. Disciplinary Counsel Proved by Clear and Convincing Evidence that Respondent Violated Pennsylvania Rule 3.1

In the Second Amended Complaint, Respondent alleged that the Defendants implemented "observational barriers" that prevented Trump poll watchers from meaningfully observing the canvassing of mail-in ballots, and by doing so engaged

in a "deliberate scheme of intentional and purposeful discrimination" to favor Joseph Biden over Donald Trump. DCX 09 at 0079-0080, 0088, 0096, 0106. Respondent also alleged that the Boards of Elections unlawfully allowed voters to cure facially deficient absentee ballots (Notice and Cure). DCX 09 at 0071, 0087, 0102-05, 0108-09.

1. The Standing Argument Did Not Violate Pennsylvania Rule 3.1

Disciplinary Counsel argues that none of the Plaintiffs had standing to assert the claims in the Second Amended Complaint, citing *Bognet v. Sec'y Commonwealth of Pennsylvania*, 980 F.3d 336, 348-52 (3d Cir. 2020), decided a little more than a week before Respondent filed that document. *See* ODC Br. at 32-33.

Before the District Court, however, Respondent noted his disagreement with *Bognet* and his intent to preserve the standing issue for appeal. DCX 13 at 0017; *see* Respondent's Br. at 28-38 (relying in part on a series of Ninth Circuit cases). Respondent argues to the Hearing Committee that the District Court's standing analysis erroneously relied on *Mecinas v. Hobbs*, 468 F. Supp. 3d 1186 (D. Ariz. 2020), a case that was later overturned by the Ninth Circuit when it endorsed a broad theory of "competitive standing" and cited other cases to the same effect. Respondent's Br. at 32-33 (citing *Mecinas v. Hobbs*, 30 F.4th 890 (9th Cir. 2022)). Respondent also seeks to distinguish *Bognet*'s standing ruling based on its differing factual context. *Id.* at 38-40; DCX 08 at 0021-22.

Given the complexity of the standing issue, Respondent's acknowledgement of the *Bognet* holding, and the line of Ninth Circuit cases supporting Respondent's rational argument for distinguishing *Mecinas*, Respondent's standing arguments had at least a faint hope of success and did not violate Pennsylvania Rule 3.1.

2. The Observational Barriers Claim Violated Pennsylvania Rule 3.1

The Pennsylvania election code set forth detailed mail-in ballot procedures to be followed by voters and election workers.

With respect to voters, the code mandated that ballot return envelopes "contain among other things a statement of the electors [sic] qualifications, together with a statement that such elector has not already voted in such primary or election." 25 Pa. Stat. Ann. § 3146.4 (absentee ballots); *see* 25 Pa. Stat. Ann. § 3150.14(b) (mail-in ballots). It also provided that after placing the ballot inside the secrecy envelope, the voter must place the secrecy envelope in the ballot return envelope. "The elector shall then fill out, date and sign the declaration printed on such envelope." 25 Pa. Stat. Ann. § 3146.6(a) (absentee ballots); 25 Pa. Stat. Ann. § 3150.16(a) (mail-in ballots).

Section 3146.8 of the law set forth the procedures to be followed by election workers during the canvassing process, which included examining the voter declarations and ensuring that the voter was eligible to vote.

The code also provided that poll watchers "shall be permitted to be present when the envelopes containing official absentee ballots and mail-in ballots are opened and when such ballots are counted and recorded" (25 Pa. Stat.

Ann. § 3146.8(b)) and "be permitted to remain in the room in which the absentee ballots and mail-in ballots are pre-canvassed." 25 Pa. Stat. Ann. § 3146.8(g)(1.1).

However, the code did not allow poll watchers to challenge ballots at canvassing. *In re Nov. 3, 2020 Gen. Election*, 240 A.3d 591, 610 (Pa. 2020). By the time that Respondent filed the Second Amended Complaint, the Pennsylvania Supreme Court had held that although observers had to be "in the room," they did not have to be within any minimum distance of canvassing activities because they were not permitted to challenge individual ballots during the canvassing process. DCX 20 at 0008 (*In re Canvassing Observation*, 241 A.3d at 350). Even with observational barriers, poll watchers:

> had the opportunity to observe the mechanics of the canvassing process. [They] witnessed Board employees inspecting the back of ballot envelopes containing the voter's declaration, before sending them on for processing; witnessed ballots being removed from their secrecy envelopes, and naked ballots which had been delivered to the Board without a secrecy envelope being segregated from ballots which arrived within such envelopes; saw that the ballot processing methods utilized by the Board were not destroying the ballot envelopes containing the voter's declaration; and perceived that the ballot secrecy envelopes were being preserved during their processing. . . . Although [they] could not view the actual declarations on the ballot envelopes, nor examine individual secrecy envelopes for improper markings, . . . this information would only be necessary if [they] were making challenges to individual ballots . . . . [S]uch challenges are not permissible under the Election Code.

Id. at 0009 (*In re Canvassing Observation*, 241 A.3d at 350-51).

Despite these rulings, Respondent alleged that the observational boundaries facilitated a sinister scheme by Democrats fraudulently to steal the election from Donald Trump (FF 28) and award it to Joseph Biden:

> Democrats who controlled the Defendant County Election Boards engaged in a deliberate scheme of intentional and purposeful discrimination . . . by excluding Republican and Trump Campaign observers from the canvassing of the mail ballots in order to conceal their decision not to enforce [certain ballot] requirements . . . [and] to count absentee and mail ballots which should have been disqualified.[9]

DCX 09 at 0079-0080, ¶ 167 (Second Amended Complaint). Respondent claimed that the observational barriers "created a system whereby it was physically impossible for the candidates and political parties to view the ballots and verify that illegally cast ballots were not opened and counted." *Id.* at 0086, ¶ 188.

The Second Amended Complaint sought an emergency order to stop the certification of the election or, in the alternative, prohibit the counting of absentee and mail-in ballots that "Trump Campaign's watchers were prevented from observing." *Id.* at 0020-21, ¶ 18. It "estimated that 680,770 ballots were processed by the Allegheny and Philadelphia County Boards of Elections when no observation was allowed." *Id.* at 0075, ¶ 155. Thus, Respondent asked the court to throw out 680,770 ballots merely because Trump poll watchers had not observed those votes being canvassed. *Id.* at 0021, ¶ 18; DCX 08 at 0107-0112; FF 28. The Second Amended Complaint also alleged that "[u]pon information and belief, a substantial

9 The Third Circuit found this claim to be "conclusory" with "no specific facts" to back it up. DCX 16 at 0009.

portion of the approximately 1.5 million absentee and mail-in votes in Defendant Counties should not have been counted," and that the vast majority of those votes favored Biden, "thus resulting in returns indicating Biden won Pennsylvania." DCX 09 at 0097, ¶ 223.

In short, Respondent claimed that if observers were not close enough to meticulously inspect ballots during canvassing, those ballots should not be counted. Yet, as the Third Circuit noted, the Second Amended Complaint failed to "allege[] facts showing improper vote counting." DCX 16 at 0010. And we have found that Respondent possessed no evidence of widespread fraud or impropriety. FF 37-44. His claim instead rested on the unsupported conclusive presumption that ballots canvassed without close third-party oversight were fraudulent and must not be counted. FF 29.

Mr. Giuliani's argument that he did not have time fully to investigate his case before filing it is singularly unimpressive. He sought to upend the presidential election but never had evidence to support that effort. Surely Rule 3.1 required more.

After an objective appraisal of the facts, a reasonable attorney would have concluded that there was not even a faint hope of success of the observational barriers claim. Comment [1] to Pennsylvania Rule 3.1 makes clear that, when representing his client, a lawyer may only pursue "lawful and ethical measures." A lawyer with "excessive and misplaced zeal" breaches his ethical obligations when he litigates a case that has no factual basis. *See Office of Disciplinary Counsel v. Malloy*, No. 178 DB 2014, at 29 (Pa. D. Bd. Rpt. Apr. 26, 2016), *recommendation*

adopted, Order, No. 178 DB 2014 (Pa. June 30, 2016). That is exactly what happened here. Respondent violated Pennsylvania Rule 3.1.

3. The Notice and Cure Claim Violated Pennsylvania Rule 3.1

The ballots of Respondent's individual clients were defective and properly rejected, but their home counties did not permit them to cure the flaws. FF 31. Respondent did not sue the counties that rejected his clients' votes. Instead, he sued seven other counties that did give notice and permitted their voters to cure. *Id.* He claimed that the Pennsylvania election code (1) did not permit Notice and Cure, and (2) that its inconsistent use resulted in disparate treatment of voters based on their county of residence and denied his clients equal protection under the law. *See* Respondent's Br. at 42.

Disciplinary Counsel argues that the Notice and Cure claims were frivolous because the individual plaintiffs should have sought to force their home counties to count their votes, rather than seek to prohibit the seven defendant counties from counting cured ballots. ODC Br. at 13-14.

Respondent's argument that Pennsylvania election law did not permit notice and cure was based on 25 Pa. Stat. Ann. § 3146.8(a) (election boards "shall safely keep the ballots in sealed or locked containers until they are to be canvassed by the county board of elections") and 25 Pa. Stat. Ann. § 3146.8(g)(1.1) (prohibiting the disclosure of "any portion of any pre-canvass meeting prior to the close of the polls"). *See* DCX 11 at 0013, 0022-23. He contended before the Hearing Committee that it was reasonable for him to rely on *Boockvar* to argue that notice and cure "was

not allowed to be implemented by the Executive Branch of government (Secretary of State), and only the Legislature could enact such a procedure," Respondent's Br. at 13, relying on the following language from *Boockvar*:

> [T]he Election Code . . . does not provide for the "notice and opportunity to cure" . . . . To the extent that a voter is at risk for having his or her ballot rejected due to minor errors made in contravention of those requirements, *we agree that the decision to provide a "notice and opportunity to cure" procedure to alleviate that risk is one best suited for the Legislature*.

238 A.3d at 374 (emphasis added); *see* Respondent's Br. at 13-14. We agree with Respondent that his theory challenging the use of Notice and Cure had at least a faint hope of success on the merits. *Accord Republican Nat'l Comm. v. Chapman*, No. 447 M.D. 2022, 2022 WL 16754061, at *17 (Pa. Commw. Ct. Sept. 29, 2022), *aff'd by an equally divided court, without op.*, Order, 284 A.3d 207 (Pa. 2022) (per curiam).

We also agree with Respondent that his equal protection theory based on the divergent uses of Notice and Cure was not frivolous. In *Pierce v. Allegheny County Bd. of Elections*, 324 F. Supp. 2d 684 (W.D. Pa. 2003), the court considered an equal protection challenge arising out of disparate treatment of absentee ballots. The relevant Pennsylvania statute provided that "an elector voting by absentee ballot is to mail the absentee ballot or deliver it in person." *Id.* at 691 (citing 25 Pa. Stat. § 3146.6(a)). The precise question in *Pierce* was whether the phrase "in person" permitted third-party hand-delivery of absentee ballots. *Id.*

Allegheny County initially permitted third parties to hand deliver absentee ballots without restriction. It then reversed course and prohibited third-party hand-

delivery, before finally allowing third-party hand-delivery with a certification from the person who delivered the ballot. *Id.* at 690. Philadelphia County did not permit third-party hand-delivery. *Id.* at 698.

Pierce sua sponte considered the effect of these different policies, recognizing that the permissibility of third-party hand-delivery of absentee ballots was an unsettled question of Pennsylvania law. *Id.* at 699. *Pierce* concluded that if the in-person requirement was directory and not mandatory:

> then different standards have been employed in different counties across the Commonwealth of Pennsylvania to determine whether an absentee ballot should be counted. *That kind of disparate treatment implicates the equal protection clause because uniform standards will not be used statewide to discern the legality of a vote in a statewide election.* . . . Because of these different *statewide* standards, plaintiffs state a justiciable claim that defendant's policies violate the equal protection clause of the Fourteenth Amendment, and this federal claim cannot be dismissed.

Id. at 699 (first emphasis added). *Bush v. Gore*, 531 U.S. 98 (2000), also provides some arguable support to Respondent. In *Bush*, the Supreme Court halted a state-wide recount following the 2000 election because the use of standardless manual recounts violated the Equal Protection clause. 531 U.S. at 103. *Bush* involved a statewide recount, not the manner in which individual counties treated absentee ballots, and *Bush* also observed that "[t]he question before the Court is not whether local entities, in the exercise of their expertise, may develop different systems for implementing elections." *Id.* at 109. Nonetheless, *Bush* asserted that:

> The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise. Having once granted the right to vote on equal terms, the State may not,

> by later arbitrary and disparate treatment, value one person's vote over that of another.

Id. at 104.

Considering the discussion in *Pierce* and the ambiguities in the *Bush* opinion, we conclude that there was at least a faint hope of success in Respondent's legal argument that disparate Notice and Cure treatment of similarly situated voters by county officials violated the Equal Protection clause. *See also Charfauros v. Bd. of Elections*, 249 F.3d 941, 945, 953 (9th Cir. 2001) (finding an equal protection violation where the elections board "changed the rules of the game midstream" for challenges to voter eligibility).

That is not the end of the analysis, however. Disciplinary Counsel argues that Respondent's proposed remedy – an injunction prohibiting certification of the presidential election or tendering the election to the Pennsylvania General Assembly – was itself frivolous. ODC Br. at 14.

Respondent does not directly respond to Disciplinary Counsel's argument that he had no basis to halt certification of the election simply because a few thousand mail-in voters were allowed to cure defects. Rather he argues generally that it is inappropriate to sanction an advocate for a requested remedy, especially at the early stages in litigation, and asks us to focus on the preliminary relief requested in the motion for a temporary restraining order – to bar certification of the election pending further Court order – rather than on the ultimate relief requested in the Second Amended Complaint. Respondent's Br. at 53-55.

Pennsylvania courts liberally construe election law in favor of the right to vote. *In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election*, 843 A.2d 1223, 1231 (Pa. 2004). However, they will not permit the counting of votes cast in violation of the election code. *See id.* at 1234. Thus, in *In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election (Appeal of Pierce)*, the Pennsylvania Supreme Court determined that the requirement of in-person delivery was mandatory and voided fifty-six ballots "delivered in contravention of this mandatory provision." *Id.*; *accord Boockvar*, 238 A.3d at 376, 378 (rejecting the argument that "no voter should be disenfranchised for failing to place his or her mail-in ballot in the secrecy envelope before returning it to the Boards"). But even though Respondent could properly seek to invalidate votes that were cured, his request for relief was frivolous because even if all "notice and cure" ballots were assumed to be Biden votes, and all were disqualified, President Biden would have won Pennsylvania by 70,000 votes instead of 80,000 votes. FF 48.

Had Respondent sought more circumscribed relief appropriate to the supposed Notice and Cure injury, the Rule 3.1 calculus may have been different. However, Respondent attempted to parlay the appropriate denial of his clients' two invalid votes into the nullification of massive numbers of legally-cast ballots. Respondent's claimed right to a draconian injunction (FF 49) was, as Judge Brann noted, "unhinged":

> Even assuming that they can establish that their right to vote has been denied, which they cannot, Plaintiffs seek to remedy the denial of their votes by invalidating the votes of millions of others. Rather than requesting that their votes be counted, they seek to discredit scores of

> other votes, but only for one race. This is simply not how the Constitution works.

DCX 14 at 0016.

The Notice and Cure claim for relief is clearly "shocking in itself" and "outlandish." *See Pearson*, 228 A.3d at 425. Respondent's assertion of it violated Pennsylvania Rule 3.1.

B. Disciplinary Counsel Proved By Clear and Convincing Evidence that Respondent Violated Pennsylvania Rule 8.4(d)

Pennsylvania Rule 8.4(d) prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice. Clogging the courts with unnecessary and frivolous cases is such a violation. *See, e.g.*, *Office of Disciplinary Counsel v. Altman*, 228 A.3d 508, 513-14 (Pa. 2020) (violations of Rule 8.4(d) for filing meritless request for attorney's fees and motion for protective order to preclude discovery). Frivolous cases impose an "unnecessary burden" on the judicial system, waste the time and resources of the court, delay the hearing of cases with merit, and cause unwarranted expense to other litigants. *Spikes*, 881 A.2d at 1126-27 (citing *Slater*, 793 A.2d at 1277) (violation of D.C. Rule 8.4(d) for filing meritless defamation action based on privileged communication to Disciplinary Counsel). Mr. Giuliani brought a case that had no factual support. It caused an astonishing waste of the resources of the District Court, the Third Circuit, and multiple defendants in a compressed time frame. Respondent violated Rule 8.4(d).

III. SANCTION

Disciplinary Counsel recommends that Respondent be disbarred. Respondent, on the other hand, contends that if he is found to have violated any Rules, he should receive only an informal admonition or reprimand or, at most, a 30-day suspension.

Although Respondent violated the Pennsylvania Rules, District of Columbia law fixes the sanction to be imposed on him. *See In re Tun*, 286 A.3d 538, 543 (D.C. 2022).

Discipline is not intended to punish a respondent, but it should serve to deter a respondent and others from engaging in similar misconduct. *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc); *In re Reback*, 513 A.2d 226, 231 (D.C. 1986) (en banc). In a sanction determination, the Court typically assesses (1) the seriousness of the conduct at issue; (2) the prejudice, if any, to the client resulting from the misconduct; (3) whether the misconduct involved dishonesty; (4) violations of other provisions of the disciplinary rules; (5) previous disciplinary history; (6) whether or not the attorney acknowledges his misconduct; and (7) circumstances in aggravation or mitigation. *See, e.g.*, *In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013). The Court also considers "'the moral fitness of the attorney' and 'the need to protect the public, the courts, and the legal profession.'" *In re Rodriguez-Quesada*, 122 A.3d 913, 921 (D.C. 2015) (quoting *In re Howes*, 52 A.3d 1, 15 (D.C. 2012)). Finally, a sanction should be consistent with that imposed for comparable misconduct, D.C. Bar R. XI, § 9(h)(1), while recognizing that "each case must be decided on its particular

facts." *Hutchinson*, 534 A.2d at 924 (quoting *In re Haupt*, 422 A.2d 768, 771 (D.C. 1980) (per curiam)).

In this case, Mr. Giuliani committed two disciplinary rule violations, but since the Rule 8.4(d) violation is based on the same conduct as the Rule 3.1 violation, we do not view it as an aggravating factor. Moreover, even though Respondent has been suspended by the New York Courts, that action is not final and therefore we do not consider it as prior discipline. As well, prejudice to Mr. Giuliani's clients is not a relevant consideration in this case.

The issue of dishonesty strikes closer to the mark. We cannot clearly and convincingly say that Mr. Giuliani intentionally lied to the District Court in connection with the Pennsylvania litigation, and he was not charged with doing so. But his hyperbolic claims of election fraud and the core thesis of the Pennsylvania litigation were utterly false, and recklessly so. Mr. Giuliani's rash overstatement claiming that the election was stolen had no evidence to support it. FF 28. His utter disregard for facts denigrates the legal profession:

> False statements intended to foment a loss of confidence in our elections . . . damage the proper functioning of a free society. When those false statements are made by an attorney, it also erodes the public's confidence in the integrity of attorneys admitted to our bar and damages the profession's role as a crucial source of reliable information . . . . It tarnishes the reputation of the entire legal profession and its mandate to act as a trusted and essential part of the machinery of justice . . . .

Giuliani, 146 N.Y.S.3d at 283 (citations omitted).

Moreover, Mr. Giuliani has not acknowledged or accepted responsibility for his misconduct. Tr. 1254-56 (Giuliani). To the contrary, he has declared his indignation (he is "shocked and offended" (Tr. 343 (Giuliani))) over being subjected to the disciplinary process ("I really believe I've been persecuted for three or four years" (Tr. 68 (Giuliani))) and suggests merely an informal admonition or reprimand as an appropriate sanction. Respondent's Br. at 62. In view of Respondent's intransigence, we are convinced that a sanction must be enhanced to ensure that it adequately deters both Respondent and other attorneys from acting similarly in the future. *See Cater*, 887 A.2d at 17.

Finally, public confidence in our courts, the law, and the legal profession are very much at stake in this unprecedented case. We cannot blind ourselves to the broader context in which Mr. Giuliani's misconduct took place. It was calculated to undermine the basic premise of our democratic form of government: that elections are determined by the voters. The Pennsylvania claims were carefully calibrated to blend into a nationwide cascade of litigation intended to overturn the presidential election. FF 9. Since John Adams established the precedent in 1800, no president – until 2020 – refused to accept defeat and step away from that office. And no lawyer – until 2020 – used frivolous claims of election fraud to impede the peaceful transition of presidential power and disenfranchise hundreds of thousands of voters.

Mr. Giuliani's effort to undermine the integrity of the 2020 presidential election has helped destabilize our democracy. His malicious and meritless claims have done lasting damage and are antagonistic to the oath to "support the

Constitution of the United States of America" that he swore when he was admitted to the Bar. This is not a partisan political view; prominent conservatives who spent "most of [their] adult lives working to support the Constitution and the conservative principles upon which it is based" have concluded that "[r]epetition of these false charges causes real harm to the basic foundations of the country, with 30 percent of the population lacking faith in the results of our elections" and "is not sustainable in a democracy." Sen. John Danforth et al., *Lost, Not Stolen: The Conservative Case that Trump Lost and Biden Won the 2020 Presidential Election*, at 1, 3, 6 (July 2022), https://lostnotstolen.org/wp-content/uploads/2022/07/Lost-Not-Stolen-The-Conservative-Case-that-Trump-Lost-and-Biden-Won-the-2020-Presidential-Election-July-2022.pdf.

We are well aware of the sanctions imposed in *Spikes*, 881 A.2d at 1128 (30-day suspension), in *In re Yelverton*, 105 A.3d 413, 431-32 (D.C. 2014) (30-day suspension with fitness), and in *Pearson*, 228 A.3d at 417 (90-day suspension). We appreciate too that our sanction recommendation is constrained by the sanctions imposed for comparable misconduct. Yet even though the respondents in *Pearson*, *Yelverton*, and *Spikes* were found to have violated the same rules as Respondent, the misconduct underlying his violations is immensely more acute. His frivolous claims impacted not only the court and parties involved but threatened irreparable harm to the entire nation.

We have considered in mitigation Mr. Giuliani's conduct following the September 11 attacks as well as his prior service in the Justice Department and as

Mayor of New York City. But all of that happened long ago. The misconduct here sadly transcends all his past accomplishments. It was unparalleled in its destructive purpose and effect. He sought to disrupt a presidential election and persists in his refusal to acknowledge the wrong he has done. For these reasons, we unanimously recommend that Mr. Giuliani be disbarred.

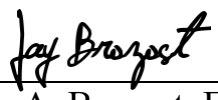
IV. CONCLUSION

For the foregoing reasons, the Hearing Committee finds that Respondent Rudolph W. Giuliani violated Pennsylvania Rules 3.1 and 8.4(d) and should be disbarred from the practice of law in the District of Columbia. *See* D.C. Bar Rule XI, § 1(a). We further recommend that Respondent's attention be directed to the requirements of D.C. Bar R. XI, § 14, and their effect on eligibility for reinstatement. *See* D.C. Bar R. XI, § 16(c).

AD HOC HEARING COMMITTEE

Robert C. Bernius, Esq., Chair

Carolyn Haynesworth-Murrell, Public Member



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