

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



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

**DISCIPLINARY COUNSEL’S RESPONSE TO RESPONDENT’S
“LEGAL ARGUMENTS” SUBMITTED ON DECEMBER 8, 2020
AND “STATEMENT” OF DECEMBER 9, 2022**

Shortly before the oral argument on December 8, 2022, Respondent submitted a 15-page, single spaced document entitled “Legal Arguments on Behalf of Respondent Rudolph W. Giuliani at DC Disciplinary Hearing by John Leventhal, Esq, and Barry Kamins, Esq.” The next day, he submitted a “Statement” offering to provide additional testimony about his pre-filing investigation. The “Legal Arguments” document and the offer to provide additional testimony are inconsistent with the regular procedures employed in disciplinary proceedings. Consideration of the “Legal Arguments” should be deferred until the post-hearing briefs, when Disciplinary Counsel will have adequate time to respond. Respondent has already

testified as to the pre-filing investigation that he conducted (or, more precisely, did not conduct), and there is no reason to re-open the closed record to provide him a second chance to address this issue.

1. Legal Arguments

As Disciplinary Counsel noted in closing argument, Respondent largely ignores the absence of any factual basis for his complaints and for the relief he sought from the district court. His “Legal Arguments” continues this tactic. Disciplinary Counsel has focused primarily on the absence of any factual basis for Respondent’s claims, particularly in the context of seeking to disqualify, at the very minimum, 680,000 Pennsylvania voters in the absence of any evidence that even one of them voted illegally. Respondent can point to a request for intermediate relief by delaying certification of the election or garden variety requests for any other relief that the court deems appropriate, but he could not succeed in his lawsuit unless the district court threw out at least 80,555 lawful votes—the margin of the Biden victory in Pennsylvania. And the smallest number of lawful votes that he ever asked to be disqualified, in what was a moving target, was 680,000. The factual basis for this extraordinary request for relief is the focus of this case. If there was no factual basis, then he violated Rules 3.1 and 8.4(d).

The absence of a legal basis is also a ground for a violation of these rules. This is where Respondent wants to exclusively focus this case. His 15-page legal argument essentially challenges Judge Brann's decision in *Donald J. Trump for President, Inc. v. Boockvar*, 502 F. Supp. 3d 899 (M.D. Pa. 2020) (DCX 14), and by implication the Third Circuit's affirmation of that decision in *Donald J. Trump for President, Inc. v. Sec'y of Pa.*, 830 F. App'x. 377 (3d Cir. 2020) (DCX 16). Most of the document is devoted to esoteric standing arguments. It utterly ignores, however, that in the cases on which it relies, the plaintiffs were not asserting standing to disqualify lawful voters from having their votes counted. Rather, they were challenging inclusion of rival candidates on the ballot, discriminatory Postal rates, the way the ballot was structured, and the like. Disciplinary Counsel will address these cases in the post-hearing briefs, which is the appropriate place for this discussion. We do note, however, that Respondent has not even attempted to articulate his substantive due process issue; instead, he seeks a remedy which would have deprived hundreds of thousands of Pennsylvanians of *their* right to substantive due process by not counting their lawful votes. Disciplinary Counsel cannot make Respondent's substantive due process contention fit in a sentence: someone [who?] was deprived of a fundamental right, protected by the Constitution [presumably the right to vote] by the "arbitrary" act of either contacting mail-in voters who had filed inadequate ballots and giving them a chance to cast a lawful voter or by imposing

social distancing restrictions on election observers during a pandemic. The articulation does not scan.

2. Statement

Finally, the evidence shows that on November 4, 2020, Respondent met with President Trump and immediately went to the campaign headquarters in search of draft complaints to challenge the election results in Pennsylvania and several other states. He did no investigation prior to determining to sue. He testified as to what subsequent investigation that he did, including speaking to Mr. Murcer, and offered the testimony of Mr. Lewandowski and Mr. Kerik about the investigation he conducted. During the examination of Respondent, Disciplinary Counsel pressed him for any additional evidence that he had to support the claims he was advancing. Respondent testified at length, although not always responsively, to those questions. A reasonable conclusion to draw from this testimony is that he did no meaningful investigation and lacked a factual basis for the case that he brought and argued. Recognizing that this is so, Respondent should not now, after the evidence has closed, be permitted to resume his testimony to bring out information that he neglected to mention under examination.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on 12th day of December 2022, I caused a copy of the foregoing Disciplinary Counsel's Response to Respondent's "Legal Arguments" Submitted on December 8, 2020 and "Statement" of December 9, 2022 to be filed electronically with the Board on Professional Responsibility by email to CaseManager@dcbpr.org, and to be served on Respondent's counsel by email to John M. Leventhal, Esq., at judgeleventhal@aidalaw.com, and to Barry Kamins, Esq., at judgekamins@aidalaw.com.

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