

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



In the Matter of

RUDOLPH W. GIULIANI, ESQUIRE,

Respondent,

**A Temporarily Suspended Member of
the Bar of the District of Columbia**

Court of Appeals.

Bar Number: 237255

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: **Board Docket No. 22-BD-027**
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: **Disciplinary Docket No. 2020-**
: **D253**
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**DISCIPLINARY COUNSEL’S OBJECTIONS
TO RESPONDENT’S WITNESSES**

The Chair’s Order of September 1, 2022, required a party calling an expert witness to provide an “expert report” to opposing counsel by October 14, 2022. With two partial exceptions, Respondent has not provided such reports despite including five witnesses on his witness list whose testimony descriptions indicate that they will be called to give expert opinions.

The two partial exceptions are Peter Navarro, who “will testify as to his extensive analysis of voting irregularities and alleged illegalities,” and John Droz, Jr., who “will testify as to his report on irregularities and improprieties in the Pennsylvania election” Joann Miller is listed as a witness who “assisted Peter

Navarro in gathering information for his reports and conveying information to Respondent's staff." Disciplinary Counsel assumes that her testimony will be merely descriptive and that she will not be asked to provide opinions. Respondent's Exhibits 13 and 14 appear to be reports written by Mr. Navarro. Respondent's Exhibit 11 appears to be a report compiled by Mr. Droz. However, both reports lack the full contents of expert reports, particularly the witnesses' qualifications and the required certification. *See* Sup. Ct. R. Civ. P. 26(a)(2)(B). Without this information, Disciplinary Counsel objects to these witnesses being offered as experts. Disciplinary Counsel would not object were the missing information supplied promptly.

Respondent has not provided an expert report from any of the following witnesses:

- Colonel Phil Waldron, who "will testify as to the methods that were employed by staff to analyze the nature of the irregularities and alleged voting illegalities."
- Dr. Shiva Ayyadurai, who "will testify as to the statistical analysis as to voting results."
- Russell Ramsland, who "will testify as to statistical analyses of the then available voting records."

Respondent's counsel has suggested to Disciplinary Counsel that they might not call these three witnesses as experts, but the cryptic descriptions quoted from Respondent's witness list indicates that they will be asked to give expert opinions. Disciplinary Counsel objects to these three witnesses being offered as experts based on Respondent's failure to provide an expert report of any kind. If Respondent intends to call these witnesses to summarize voluminous documents, then Respondent must make those documents available for examination by Disciplinary Counsel. *See Fed. R. Evid. 1006.* That has not occurred to date. Unless that occurs in a timely manner, then Disciplinary Counsel objects to Respondent calling these witnesses to provide summaries.

Additionally, Respondent has provided no contact information for any of witnesses on his witness list. While it may be possible to locate some, rather than searching for each witness' contact information, Disciplinary Counsel requests that Respondent immediately supply it.

Respondent has also objected to any testimony by Disciplinary Counsel's designated expert, Matthew Sanderson, on the ground that he is biased. Mr. Sanderson has represented a Republican organization, The Lincoln Project, which Respondent publicly claimed helped organize the January 6 incident at the Capitol. On behalf of his client, Mr. Sanderson wrote Mr. Giuliani a strong letter in response. The letter represents the position of Mr. Sanderson's client. Disciplinary Counsel

has retained Mr. Sanderson as a consulting expert on a number of matters, not just this case. Aware of this letter, Disciplinary Counsel's intent has always been to use its other designated expert, Professor Ortiz, as its testifying expert. However, particularly in light of the practice of exchanging witness lists and exhibits simultaneously, Disciplinary Counsel did not want to foreclose calling Mr. Sanderson as a rebuttal witness if necessary. His expert report had already been made available to Respondent in discovery, and he was designated as a potential witness so as not to forego the opportunity to call him if he were needed.

Now that Disciplinary Counsel is aware of Respondent's exhibits and the names of his witnesses, it seems unlikely that Mr. Sanderson will be asked to testify. Respondent concedes in his motion to disqualify Mr. Sanderson that bias, while always appropriate grist for cross-examination, is generally not disqualifying; it goes to weight not admissibility. Aside from the letter on behalf of The Lincoln Project, most of the other materials Respondent has submitted have little, if anything to do with Mr. Giuliani. Even with respect to The Lincoln Project, it is not appropriate to confuse strong language on behalf of a controversial client with a lawyer's personal views or beliefs. *Cf.* D.C. Rule of Professional Conduct 1.2, [Comment 3]. Disciplinary Counsel submits that the issue of Mr. Sanderson's qualifications as an expert should be taken up if and when he is called to testify.

Respectfully submitted,

Hamilton P. Fox, III

Hamilton P. Fox, III
Disciplinary Counsel

/s/ Jason R. Horrell

Jason R. Horrell
Assistant Disciplinary Counsel

OFFICE OF DISCIPLINARY COUNSEL
515 5th Street, N.W.
Building A, Room 117
Washington, D.C. 20001
202-638-1501

CERTIFICATE OF SERVICE

I hereby certify that on October 25, 2022, I caused a copy of the foregoing *Disciplinary Counsel's Objections to Respondent's Witnesses* 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.

Hamilton P. Fox, III

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Disciplinary Counsel