



March 7, 2022

VIA ELECTRONIC MAIL: [REDACTED]

State Bar of Georgia
Office of the General Counsel
104 Marietta Street, N.W., Suite 100
Atlanta, GA 30303

Dear General Counsel's Office:

The 65 Project is a bipartisan, nonprofit effort to protect democracy from abuse of the legal system by holding accountable lawyers who engage in fraudulent and malicious efforts to overturn legitimate elections.

We write to request that the State Disciplinary Board ("Disciplinary Board") investigate the actions taken by Daryl R. Moody relating to his falsely swearing to be a duly elected Georgia elector in 2020 and transmitting that fraudulent certificate to the United States District Court for the Northern District of Georgia and to the United States Congress.

Mr. Moody's conduct appears to have violated numerous statutes, as well as the Rules of Professional Conduct 3.3 (Candor to Tribunal), 8.4(a)(1) (Violating and Assisting Others in Violating the Rules of Professional Conduct), 8.4(a)(4) (Engaging in Acts Involving Dishonest, Fraud, Deceit, or Misrepresentation), 8.4(a)(8) (Committing a Criminal Act Bearing on a Lawyer's Trustworthiness).

BACKGROUND

Donald Trump lost the 2020 presidential election.¹ He also lost Georgia and its 16 electoral votes.² Following the election, Mr. Trump and his allies filed at least six lawsuits in the state, seeking to prevent the Georgia from certifying Mr. Biden as the winner of the state's electoral

¹ See United States National Archives, Electoral College Results – 2020, available at <https://www.archives.gov/electoral-college/2020>.

² See Certificate of Ascertainment, State of Georgia, available at <https://www.archives.gov/files/electoral-college/2020/ascertainment-georgia.pdf>.

votes.³ By December 14, 2020, Georgia’s courts, including the state supreme court, had rejected all such efforts.⁴

Therefore, at noon on Monday, December 14, 2020, Georgia’s presidential electors convened in the State Senate Chamber in the Georgia capitol. They met under the authority of state and federal law. During an open meeting broadcast live and attended by the media, the electors conducted the business prescribed by state and federal law: they elected a chairperson, cast and counted the necessary ballots, signed the required papers, and sent valid, official documents reflecting the lawful outcome regarding Georgia’s 16 electoral votes to the President of the United States Senate, the Georgia Secretary of State, the Archivist of the United States, and the Chief Judge of the United States District Court for the Northern District of Georgia.

Through these actions, the presidential electors followed the requirements of Georgia law, carried out the wishes of Georgia’s voters, and vindicated American democracy through the lawful, peaceful transition of power that stands as the hallmark of our nation.

While these lawful, duly selected presidential electors convened and carried out their duties, another group of individuals met in secret elsewhere. This group executed a set of documents through which they purported to be Georgia’s duly appointed presidential electors and cast their votes for Mr. Trump and Vice President Mike Pence. They then transmitted these false documents, stating:

“Pursuant to 3 U.S.C. § 11, enclosed please find duplicate originals of Georgia’s electoral votes for President and Vice President, as follows: two (2) duplicate originals for the President of the Senate and the Archivist, and one (1) duplicate original for the Secretary of State and Chief Judge.”⁵

These false electors acted without any legal authority or mandate. Indeed, their acts contradicted federal and state statutes, as well as federal and state court rulings. The individuals who signed these documents did so knowing that they were false at the time they signed and transmitted them, nor did they ever act to correct or retract the fraudulent papers.

Daryl R. Moody, an attorney licensed by the State of Georgia, participated in this effort as a false elector. Mr. Moody’s conduct raises significant concerns as to whether he violated federal and state law and the Rules of Professional Conduct.

³ See *In re Enforcement of Election Laws and Security Ballots Cast or Received after 7:00pm on November 3, 2020*, SPCV20-00982 (Sup. Ct. of Chatham Cty.); *Brooks v. Mahoney*, 4:20-cv-00281-RSB-CLR (S.D. Ga. Nov. 11, 2020); *Wood v. Raffensperger*, 1:20-cv-04651-SD (N.D. Ga. Nov. 13, 2020); *Pearson v. Kemp*, 1:20-cv-04809-TCB (N.D. Ga. Nov. 27, 2020); *Boland v. Raffensperger*, 2020CV343018 (Sup. Ct. of Fulton Cty.); *Trump v. Raffensperger*, 2020CV343255 (Sup. Ct. of Fulton Cty.), S21Mo561 (Sup. Ct. of Ga.).

⁴ See *Trump v. Raffensperger*, S21M0561 (Sup. Ct. of Ga.).

⁵ American Oversight obtained the false certificates. They can be found at <https://www.americanoversight.org/american-oversight-obtains-seven-phony-certificates-of-pro-trump-electors>.

APPLICABLE STANDARDS AND RULES OF PROFESSIONAL CONDUCT

Rule 3.3(a) of the Rules of Professional Conduct provides:

A lawyer shall not knowingly: 1) make a false statement of material fact or law to a tribunal; 2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client; 3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or 4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

Subsection (b) pointedly provides that the duty continues to the proceeding's conclusion.

The Rules define tribunal to include legislative bodies acting in adjudicative capacities:

“Tribunal” denotes a court, an arbitrator in an arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a legal judgment directly affecting a party's interests in a particular matter.

Additionally, Rule 8.4(a) provides that it constitutes professional misconduct to:

(1) violate or knowingly attempt to violate the Georgia Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through acts of another;

...

(4) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation;

...

(8) commit a criminal act that relates to the lawyer's fitness to practice law or reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer, where the lawyer has admitted in *judicio*, the commission of such act.

Finally, the oath and Preamble to the Georgia Rules of Professional Conduct provide the appropriate framework through which Mr. Moody's potential misconduct should be viewed. The Oath that Mr. Moody took to gain admission to the State Bar of Georgia prescribes:

I do solemnly swear that I will conduct myself as an attorney or counselor of the Supreme Court of Georgia, truly and honestly, justly and uprightly, and according to law; and that I will support the Constitution of the State of Georgia and the Constitution of the United States. So help me God.

Additionally, the Preamble to the Georgia Rules of Professional Conduct states, in part:

A lawyer is a representative of clients, an officer of the legal system and a citizen having special responsibility for the quality of justice.

...

A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

A SUBSTANTIAL BASIS EXISTS FOR THE DISCIPLINARY BOARD TO INVESTIGATE MR. MOODY'S CONDUCT AND TO IMPOSE APPROPRIATE DISCIPLINE UP TO, AND INCLUDING, DISBARRMENT

The Disciplinary Board should investigate Mr. Moody's conduct on the following bases:

1. Mr. Moody engaged in illegal conduct that reflects adversely on his honesty and trustworthiness

Mr. Moody violated several Georgia statutes, including:

- O.C.G.A. § 16-10-20.1, which prohibits filing, entering, or recording any document in a public record knowing that such document is false or contains a materially false, fictitious, or fraudulent statement or representation;
- O.C.G.A. § 16-10-20, which prohibits making a false, fictitious, or fraudulent statement or representation or using any false writing or document that contains a false, fictitious, or fraudulent statement;
- O.C.G.A. § 16-10-23, which prohibits holding oneself out as a public officer with intent to mislead; and
- O.C.G.A. § 16-10-71, which prohibits making a false statement in a that purports to be made under lawful oath or affirmation.

These statutes all relate to conduct that, if engaged in, negatively reflect someone's honesty and trustworthiness.

2. Mr. Moody violated the duty of candor to a tribunal

Mr. Moody participated in transmitting the false certificate that he signed to the U.S. District Court for the Northern District of Georgia. Under Rule 1.0, a court is tribunal, without caveat or exception. Sending the fraudulent documents to the United States District Court implicated Mr. Moody's duty of candor and he violated those standards.

Additionally, Congress, when acting pursuant to the Electoral Count Act, engages in a proceeding that implicates the Rules' definition of tribunal. As a federal court in one of the January 6 defendants has found:

[I]t is a formal process. In addition, the Vice President, as President of the Senate, serves as presiding officer while the votes cast by Electors are counted. As in a court of law, members of Congress may object, which in turn causes the Senate and the House of Representatives to separately consider and render their separate decision[s] on the objection. Further, after the count is finished, the certification must end with a result declared.⁶

Moreover, the Comment [1] to Rule 3.9, addressing non-adjudicative proceedings, specifically states that a legislature, "like a court, should be able to rely on the integrity of the submissions made to it. A lawyer appearing before such a body should deal with the tribunal honestly and in conformity with applicable rules of procedures." And Comment [2] goes further:

Lawyers have no exclusive right to appear before nonadjudicative bodies, as they do before a court. The requirements of this rule therefore may subject lawyers to regulations inapplicable to advocates who are not lawyers. However, legislatures and administrative agencies have a right to expect lawyers to deal with them as they deal with courts.

Mr. Moody's false and uncorrected assertions to the United States District Court and Congress that he was a duly appointed elector from Georgia violated his duty of candor.

3. Mr. Moody engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation

The entire enterprise that Mr. Moody participated in involved dishonesty, fraud, deceit, and misrepresentation. Further, this ethical standard applies to conduct that occurs outside of a tribunal.

⁶ *United States v. Nordean*, 2021 WL 6134595 (D.C.D.C. 2021), at *6 (citations and quotation marks omitted).

4. Mr. Moody assisted others to engage in conduct that violated the Rules of Professional Conduct

In an effort to overturn the legitimate results, Mr. Trump and his allies filed at least 65 baseless lawsuits across the country. None succeeded and, in some situations, courts have imposed sanctions on the lawyers who participated in these suits and referred them for sanctions to their respective state bars.

Failing to achieve their desired ends through the courts, Mr. Trump's supporters turned to pressuring Vice President Mike Pence to usurp Congress's power by throwing out the electoral votes of seven states that Joe Biden won and thereafter declaring Mr. Trump (and, incidentally, Mr. Pence) victorious. The basis for this strategy rested in two memoranda written by John Eastman, one of Mr. Trump's attorneys.⁷

Mr. Eastman's memoranda, which has been shown to be grounded in neither law nor fact, recommended that Mr. Pence take "BOLD" action to secure Mr. Trump's victory.⁸ Mr. Pence would preside over the January 6, 2021 Joint Session of Congress, during which the electoral votes cast and certified in each state on December 14, 2020 would be opened and confirmed. Established law and precedent limited Mr. Pence's role to opening the Certificates of Votes and announcing the results of each, as well as the outcome. Mr. Eastman sought to have Mr. Pence disregard the vice president's constitutional and statutory obligations, and to instead claim unto himself the authority to invalidate seven states' electoral votes and unilaterally declare Mr. Trump the victor, without turning the matter over to Congress. The scheme required an existing controversy over which slate of electors should be viewed as valid from the seven states.⁹ In other words, for Mr. Pence to throw out the electoral votes cast and certified by the seven states, there needed to be an alternative slate of electors who claimed to be the legitimate electors.

Individuals from those seven states obliged and created false slates of electors. And thus, Mr. Eastman's scheme became a conspiracy.

Unfortunately, Mr. Moody chose to participate. To put that decision in context for assessing their professional conduct, 84 individuals across Arizona, Georgia, Michigan, New Mexico, Nevada, Pennsylvania, and Wisconsin agreed to engage in this effort to subvert democracy. But only five of those 84 are lawyers, with numerous lawyers deciding not to appear at the meetings despite originally being selected as electors.

With seven separate groups filing false certificates with the Archivist, a condition precedent of Mr. Eastman's plan had been satisfied. He and Mr. Trump then continued to apply significant private and public pressure on Mr. Pence to go along with the scheme.

Boris Epshteyn, another of Mr. Trump's attorneys, explained:

⁷ The main Eastman memorandum is available at <https://www.cnn.com/2021/09/21/politics/read-eastman-full-memo-pence-overturn-election/index.html>.

⁸ *Id.*

⁹ *Id.*

This was in total congruence with the overall effort to send it back to the states. With the rampant fraud across the country, the interplay of the 12th Amendment and the Electoral Count Act made it important to have alternate slates of electors be available when a challenge to states' slate of electors would be successful.¹⁰

That is why at the January 6 rally, speakers used Georgia and the false certificate that Mr. Moody signed as part of that effort. Mr. Giuliani said:

[E]very single thing that has been outlined as the plan for today is perfectly legal. I have Professor Eastman here with me to say a few words about that. He's one of the preeminent constitutional scholars in the United States. It is perfectly appropriate given the questionable constitutionality of the Election Counting Act of 1887 [sic] that the Vice President can cast it aside and he can do what a president called Jefferson did when he was Vice President. He can decide on the validity of these crooked ballots, or he can send it back to the legislators, give them five to 10 days to finally finish the work.¹¹

Mr. Eastman, who spoke right before Mr. Trump, said:

[A]ll we are demanding of Vice President Pence is this afternoon at 1:00 he let the legislators of the state look into this so we get to the bottom of it, and the American people know whether we have control of the direction of our government, or not... And anybody that is not willing to stand up to do it, does not deserve to be in the office. It is that simple.¹²

And Mr. Trump declared:

In Georgia, your secretary of state who, I can't believe this guy's a Republican.... The Georgia secretary of state and pathetic governor of Georgia.... Because of him and others, you have Brian Kemp... Make no mistake, this election was stolen from you, from me and from the country.

...

¹⁰ B. Reinhard, et al., *As Giuliani Coordinated Plan for Trump Electoral Votes in States Biden Won, Some Elections Balked*, Washington Post (Jan. 20, 2022), available at https://www.washingtonpost.com/investigations/electors-giuliani-trump-electoral-college/2022/01/20/687e3698-7587-11ec-8b0a-bcfab800c430_story.html.

¹¹ The transcript of Mr. Giuliani's and Mr. Eastman's January 6, 2021 remarks is available at <https://www.rev.com/blog/transcripts/rudy-giuliani-speech-transcript-at-trumps-washington-d-c-rally-wants-trial-by-combat>.

¹² *Id.*

Even though Pennsylvania and other states want to redo their votes. They want to see the numbers. They already have the numbers. Go very quickly. And they want to redo their legislatures because many of these votes were taken, as I said, because it wasn't approved by their legislature.

...

But the only way that can happen is if Mike Pence agrees to send it back. Mike Pence has to agree to send it back.

...

And Mike Pence is going to have to come through for us, and if he doesn't, that will be a, a sad day for our country because you're sworn to uphold our Constitution.

Now, it is up to Congress to confront this egregious assault on our democracy. And after this, we're going to walk down, and I'll be there with you, we're going to walk down, we're going to walk down.

Anyone you want, but I think right here, we're going to walk down to the Capitol, and we're going to cheer on our brave senators and congressmen and women, and we're probably not going to be cheering so much for some of them.

Because you'll never take back our country with weakness. You have to show strength and you have to be strong. We have come to demand that Congress do the right thing and only count the electors who have been lawfully slated, lawfully slated.¹³

It is well-documented what happened next. Members of the crowd then marched to the Capitol, breached security, vandalized the building, assaulted police officers, and sought to hunt down members of Congress and Mr. Pence. Nine people died as a result of the insurrection, including four police officers who committed suicide within seven months of responding to the attack.¹⁴ The insurrectionists injured over 138 police officers.¹⁵ To date, 769 people have been charged in

¹³ The transcript of Mr. Trump's January 6, 2021 remarks is available at

<https://www.cnn.com/2021/02/08/politics/trump-january-6-speech-transcript/index.html>.

¹⁴ Wolfe, Jan, *Four Officers Who Responded to U.S. Capitol Attack Have Died by Suicide*, Reuters (Aug. 2, 2021), available at <https://www.reuters.com/world/us/officer-who-responded-us-capitol-attack-is-third-die-by-suicide-2021-08-02/>.

¹⁵ Schmidt, Michael S.; Broadwater, Luke, *Officers' Injuries, Including Concussions, Show Scope of Violence at Capitol Riot*, N.Y. Times (Feb. 12, 2021), available at <https://www.nytimes.com/2021/02/11/us/politics/capitol-riot-police-officer-injuries.html>.

connection with the January 6 insurrection, with 165 of those defendants pleading guilty, and courts have imposed sentences reaching over 60 months.¹⁶

Thus, Mr. Moody participated in a concerted effort to pressure Mr. Pence to disregard his constitutional and statutory duties so that Mr. Trump could reclaim the presidency. The Rules establish that aiding others to violate such standards constitutes its own misconduct. Mr. Eastman's conduct in furtherance of his client, Mr. Trump, violated numerous standards. The fact that Mr. Eastman is admitted elsewhere does not shield Mr. Moody, both because of the reciprocity enforcement standards and, simply, because Rule 8.4 does not require the other actor to be a lawyer at all, as the Comment to that standard makes clear.

The United States Supreme Court has long recognized in upholding disciplinary actions that “speech by an attorney is subject to greater regulation than speech by others.”¹⁷ As officers of the court an attorney is “an intimate and trusted and essential part of the machinery of justice” and a “crucial source of information and opinion.”¹⁸ Although attorneys, of course, maintain First Amendment rights, the actions in question here cross far beyond protected speech. Indeed, disciplinary boards and courts considering the conduct of other lawyers involved in the effort to overturn the 2020 election have rejected assertions that the attorneys enjoyed First Amendment protections for their conduct.

By signing the certificate falsely claiming to be a Georgia elector and allowing that certificate to be transmitted to the United States District Court, the United States Senate, and the Archivist of the United States, Mr. Moody disregarded the U.S. Constitution, violated federal and state law, and ignored the judicial decisions on that very matter. Further, he failed to conform to the duties the Rules of Professional Conduct place on attorneys.

That a member of the State Bar of Georgia would engage in such actions should cause considerable distress within the entire legal community.

For the reasons set forth above, we respectfully request that the Disciplinary Board investigate Mr. Moody's conduct and impose appropriate discipline.

Sincerely,



Michael Teter
Managing Director, The 65 Project

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¹⁶ See <https://www.insider.com/all-the-us-capitol-pro-trump-riot-arrests-charges-names-2021-1>.

¹⁷ *Ohralik v. Ohio State Bar Assn.*, 436 U.S. 447, 465 (1978).

¹⁸ *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1056, 1072 (1991).