



March 7, 2022

VIA ELECTRONIC MAIL: [REDACTED]

Attorney Grievance Committee
Supreme Court of the State of New York
Appellate Division
180 Maiden Lane
New York, NY 10038

Dear Attorney Grievance Committee Members:

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, unethical conduct seeking to overturn legitimate election results.

We request that the Attorney Grievance Committee investigate the actions taken by Boris Epshteyn (Registration No. 4595732) as a lawyer and advisor to Donald Trump and his presidential campaign, working alongside Rudy Giuliani in an effort to overturn the 2020 presidential election.

Mr. Epshteyn's conduct violated numerous Rules of Professional Conduct, including Rule 3.3 (Candor Toward Tribunal), Rule 4.1 (Truthfulness in Statements to Others), and Rule 8.4 (Misconduct). A full investigation by the Grievance Committee will demonstrate the egregious nature of Mr. Epshteyn's actions, especially when considered in light of his intent, the direct and possible consequences of his behavior, and the serious risk that Mr. Epshteyn will repeat such conduct unless the Supreme Court of the State of New York acts on this matter.

BACKGROUND

Donald Trump lost the 2020 presidential election.¹ Anticipating his loss, Mr. Trump and his allies began questioning the election's legitimacy months before even one voter had cast a ballot.² In fact, this fit a pattern of Mr. Trump declaring fraud or a rigged election any time he lost or anticipated a loss.

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

² Kevin Liptak, *A List of the Times Trump Has Said He Won't Accept the Election Results or Leave Office if He Loses*, CNN (Sept. 24, 2020), <https://www.cnn.com/2020/09/24/politics/trump-election-warnings-leaving-office/index.html>.

Joe Biden received over 81 million votes in November 2020, defeating Mr. Trump by over seven million votes and over four percentage points.³ Mr. Trump’s head of the U.S. Cybersecurity and Infrastructure Security Agency, Christopher Krebs, [announced](#) that the “November 3rd election was the most secure in American history. . . . There is no evidence that any voting system deleted or lost votes or changed votes or was in any way compromised.” Mr. Trump [fired him](#). William Barr, Mr. Trump’s own Attorney General, [declared that the Department of Justice](#) has “not seen fraud on a scale that could have effected a different outcome in the election.” Attorney General Barr announced his resignation less than two weeks later, but not before again confirming that the 2020 elections had been free and fair.⁴

Many of Mr. Trump’s own senior advisors agreed with Attorney General Barr and Mr. Krebs.⁵ Indeed, Deputy (and later Acting) Attorney General Jeffrey Rosen and Associate (and later Acting) Deputy Attorney General Richard Donoghue regularly refuted the false information and allegations that Mr. Trump and his allies asserted about a fraudulent election.⁶ Mr. Rosen has testified that on December 15, 2020, at a meeting that included Mark Meadows, White House Chief of Staff, that he and others told Mr. Trump that the information he was receiving from his political allies was not correct.⁷ And Mr. Donoghue has testified to the Select Committee to Investigate the January 6th Attack on the United States Capitol (Select Committee) that on December 27, 2020, he told Mr. Trump “in very clear terms” that after “dozens of investigations, hundreds of interviews” looking at “Georgia, Pennsylvania, Michigan, and Nevada,” the Department of Justice – Mr. Trump’s own Department of Justice – had concluded that “the major allegations are not supported by the evidence developed.”⁸

Despite clear proof that no fraud occurred, and that no one stole the election from him, Mr. Trump and his lawyers sought to overturn the legitimate results by filing 65 baseless lawsuits across the country.⁹ None succeeded and, in fact, courts have imposed sanctions on the lawyers who participated in these suits and referred them for sanctions to their respective state bars.¹⁰

³ See Federal Election Commission, *Official 2020 Presidential General Election Results*, available at <https://www.fec.gov/resources/cms-content/documents/2020presgeresults.pdf>.

⁴ M. Balsamo, *Disputing Trump, Barr says no widespread election fraud*, Associated Press (Dec. 1, 2020), <https://perma.cc/4U8N-SMB5>.

⁵ See Deposition of Jason Miller (Feb. 3, 2022), available at <https://january6th.house.gov/sites/democrats.january6th.house.gov/files/2022.03.02%20%28ECF%20160%29%20Opposition%20to%20Plaintiff%27s%20Privilege%20Claims%20%28Redacted%29.pdf>;

Interview of Jeffrey Rosen (Aug. 7, 2021), United States Senate Committee on the Judiciary, 117th Cong. 30, available at <https://www.judiciary.senate.gov/rosen-transcript-final>.

⁶ See Interview of Jeffrey Rosen *see also* Interview of Richard Donoghue (Oct. 1, 2021), available at <https://january6th.house.gov/sites/democrats.january6th.house.gov/files/2022.03.02%20%28ECF%20160%29%20Opposition%20to%20Plaintiff%27s%20Privilege%20Claims%20%28Redacted%29.pdf>

⁷ Interview of Jeffrey Rosen.

⁸ Interview with Richard Donoghue.

⁹ W. Cummings, J. Garrison & J. Sargent, *By the numbers: President Donald Trump’s failed efforts to overturn the election*, USA Today (Jan. 6, 2021), available at <https://www.usatoday.com/in-depth/news/politics/elections/2021/01/06/trumps-failed-efforts-overturn-election-numbers/4130307001/>.

¹⁰ See, e.g., *King v. Whitmer*, No. 20-13134 (U.S. Dist. Ct. E. Dist. Mich. Aug. 25, 2021), available at https://www.michigan.gov/documents/ag/172_opinion_order_King_733786_7.pdf.

FACTS GIVING RISE TO COMPLAINT

Mr. Epshteyn actively advised, and participated in, the litigation. As Rudy Giuliani, [Mr. Trump's lead attorney stated](#):¹¹

Well, this is representative of our legal team. We're representing President Trump and we're representing the Trump campaign. When I finish, Sidney Powell and then Jenna Ellis will follow me. And we will present in brief the evidence that we've collected over the last, I guess it is two weeks. Also, Joseph diGenova, Victoria Toensing are here with me. There are a lot more lawyers working on this, but I guess, we're the senior lawyers. And Boris Epshteyn.¹²

Mr. Epshteyn stood alongside Mr. Giuliani as the latter repeated falsehood after falsehood about the 2020 election, on behalf of the legal team representing Mr. Trump. In fact, just a small sampling of what Mr. Giuliani said *at one press conference* illustrates the problem:

And what emerged very quickly is it's not a single voter fraud in one state. This pattern repeats itself in a number of states. Almost exactly the same pattern, which to any experienced investigator, prosecutor would suggest that there was a plan from a centralized place to execute these various acts of voter fraud, specifically focused on big cities and specifically focused on, as you would imagine, big cities controlled by Democrats, and particularly focused on big cities that have a long history of corruption.

The number of voter fraud cases in Philadelphia could fill a library. Just a few weeks ago, there was a conviction for voter fraud and one two weeks before that. And I've often said, I guess, sarcastically, but it's true, the only surprise I would have found in this is if Philadelphia hadn't cheated in this election, because, for the last 60 years, they've cheated in just about every single election. You could say the same thing about Detroit.

Each one of these cities are cities that are controlled by Democrats, which means they can get away with anything they want to do. It means they have a certain degree of control over... certainly control the election board completely. And they control law enforcement. And unfortunately, they have some friendly judges that will issue ridiculously irrational opinions just to come out in their favor.

¹¹ Rudy Giuliani Trump Campaign Press Conference Transcript November 19: Election Fraud Claims, available at <https://www.rev.com/blog/transcripts/rudy-giuliani-trump-campaign-press-conference-transcript-november-19-election-fraud-claims>.

¹²

...

A truck pulled up to the Detroit center where they were counting ballots. The people thought it was food, so they all ran to the truck. Wasn't food. It was thousands and thousands of ballots and the ballots were in garbage cans, they were in paper bags, they were in cardboard boxes, and they were taken into the center. They were put on a number of tables. At that time, they thought all the Republican inspectors had left, all but two had and an employee of Dominion who we will address a little bit later, Dominion.¹³

And, again, while Mr. Giuliani spoke, he did so on behalf of the entire legal team. Indeed, photos from the press conference reveal Mr. Epshteyn as an active participant:



Jonathan Ernst/Reuters

Trump Campaign Senior Legal Adviser Jenna Ellis speaks as Trump campaign adviser Boris Epshteyn whispers to former New York City Mayor Rudy Giuliani, personal attorney to President Donald Trump, during a news conference about the 2020 U.S. presidential election results at Republican National Committee headquarters in Washington, Nov. 19, 2020.

Indeed, when [Mr. Epshteyn spoke about the election](#), he repeated the same false claims that Mr. Giuliani offered:

- “We will lay out evidence, after evidence, after evidence of Republican poll watchers not being allowed to observe the count of absentee ballots and of Republican voters being treated differently because they don’t get the opportunity to cure their ballots...”
- “As you look across the country...look at Georgia, two days in a row you had a significant amount of votes come out that they were simply uncounted and they were pro President Trump votes. Fulton County yesterday [inaudible] County today 5,000 votes total that were miraculously lost when it came time to count them...”

¹³ <https://www.rev.com/blog/transcripts/rudy-giuliani-trump-campaign-press-conference-transcript-november-19-election-fraud-claims>

- “In Michigan, we know there have been severe irregularities similar to the ones I recounted in Pennsylvania...”
- “And in Nevada, today, the Trump campaign filed a lawsuit alleging a huge array of irregularities and voter fraud and calling for the results of that election in Nevada to be overturned.”
- “And there are other issues in Arizona, New Mexico, Virginia, and other states. The bottom line is that the Democrats perpetrated a fraud on the American people all across the country. They did everything they could to steal this election by using mail-in balloting and we’re not going to let them do that.”
- “You saw what happened in one...small county in Michigan, Antrim County. Six thousand votes switched from President Trump to Vice President Joe Biden. And then, and then again, miraculously, it was called a mistake, but we know it probably wasn’t a mistake.”
- “We are absolutely winning this case.”
- “The merits of our case are strong.”

Mr. Epshteyn was wrong. The courts universally rejected Mr. Trump’s claims.

Failing to achieve their desired ends through the courts or the state legislatures, Mr. Trump’s legal team 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 originated with Mr. Trump’s lawyers, and Ms. Ellis played a significant role in orchestrating the effort.

The plan began with a [memorandum](#) from Kenneth Chesebro, another attorney for Mr. Trump, outlining a plan to create slates of false electors from several states, who would claim that they were the legitimate electors. The memorandum relied on factual and legal misstatements and absurdities, and relegated to footnotes (if cited at all) the critical statutes, rules, and facts that disproved the memorandum’s contentions.

Mr. Chesebro’s memorandum appears to have made its way to John Eastman, another of Mr. Trump’s attorneys.¹⁴ Mr. Eastman then drafted [two memoranda](#) of his own, which have similarly been shown to be grounded in neither law nor fact, and that recommended that Mr. Pence take “BOLD” action to secure Mr. Trump’s victory.¹⁵ 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

¹⁴ The main Eastman memorandum is available at <https://www.cnn.com/2021/09/21/politics/read-eastman-full-memo-pence-overturn-election/index.html>.

¹⁵ Available at <https://www.cnn.com/2021/09/21/politics/read-eastman-full-memo-pence-overturn-election/index.html>.

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.¹⁶ 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.

Importantly, even the plan's main proponent, John Eastman, one of Mr. Trump's attorneys, admitted at the time that he was offering an interpretation of the Twelfth Amendment or the Electoral Count Act that not even one member of the Supreme Court would agree with.¹⁷ In fact, in an email to Mr. Pence's lawyer, Mr. Eastman acknowledged he was proposing violating the Electoral Count Act – though he considered it only a “relatively minor violation.”¹⁸

Mr. Epshteyn, alongside Rudy Giuliani, Mr. Trump's personal lawyer, took up the cause. As Mr. Epshteyn has explained:

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.¹⁹

With Mr. Giuliani, Mr. Epshteyn called potential false electors in the critical states and sought to persuade them to participate in the scheme. Many refused. For example, Lawrence Tabas – the Chairman of the Pennsylvania Republican Party and *an election lawyer who represented Mr. Trump in 2016* – rejected the effort and did not attend the gathering to select false electors.²⁰ Another originally slated elector, John Isakson, from Georgia later told the [Washington Post](#): “It seemed like political gamesmanship, and that's not something I would have participated in. We have a process for certifying the election. We have a process for challenging the election. The challenges failed, so I wouldn't have participated in something that was going against all of that.”²¹

Unfortunately, 84 individuals from seven states obliged and created false slates of electors. And thus, the scheme, orchestrated, in part, by Mr. Epshteyn and Mr. Giuliani, became a conspiracy.

¹⁶ *Id.*

¹⁷ Deposition of Gregory Jacob (Feb 1, 2022), available at <https://january6th.house.gov/sites/democrats.january6th.house.gov/files/2022.03.02%20%28ECF%20160%29%20Opposition%20to%20Plaintiff%27s%20Privilege%20Claims%20%28Redacted%29.pdf>.

¹⁸ Email from John Eastman to Gregory Jacob on Jan. 6, 2021, available at <https://january6th.house.gov/sites/democrats.january6th.house.gov/files/2022.03.02%20%28ECF%20160%29%20Opposition%20to%20Plaintiff%27s%20Privilege%20Claims%20%28Redacted%29.pdf>.

¹⁹ 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.

²⁰ *Id.*

²¹ *Id.*

On December 14, 2020, the false electors met in Arizona, Georgia, Michigan, New Mexico, Nevada, Pennsylvania, and Wisconsin. In each of the states but New Mexico and Pennsylvania, the individuals declared themselves the “duly elected and qualified Electors for President and Vice President of the United States of America” and certified that their state cast its electoral votes for Mr. Trump.

They then transmitted these false documents, stating:

“Pursuant to 3 U.S.C. § 11, enclosed please find duplicate originals of [State]’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.”²²

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.

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 fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; (2) fail to disclose to the tribunal controlling legal authority known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or (3) offer or use evidence that the lawyer knows to be false.

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.

Rule 4.1 provides that: “In the course of representing a client, a lawyer shall not knowingly make a false statement of fact or law to a third person.”

²² American Oversight obtained the false elector certificates. They are available at <https://www.americanoversight.org/american-oversight-obtains-seven-phony-certificates-of-pro-trump-electors>.

Rule 8.4 provides that it constitutes professional misconduct to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) engage in illegal conduct that adversely reflects on the lawyer's honesty, trustworthiness or fitness as a lawyer;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- ... or ...
- (h) engage in any other conduct that adversely reflects on the lawyer's fitness as a lawyer.

A SUBSTANTIAL BASIS EXISTS FOR THE ATTORNEY GRIEVANCE COMMITTEE TO INVESTIGATE MR. EPSHTEYN'S CONDUCT AND TO IMPOSE APPROPRIATE DISCIPLINE

The Supreme Court of the State of New York, Appellate Division, suspended Mr. Giuliani's license for his post-election conduct, including the statements he made at press conferences and in media appearances. As the Court stated:

[T]here is uncontroverted evidence that [Mr. Giuliani] communicated demonstrably false and misleading statements to courts, lawmakers and the public at large in his capacity as lawyer for former President Donald J. Trump and the Trump campaign in connection with Trump's failed effort at reelection in 2020. These statements were made to improperly bolster [Mr. Giuliani's] narrative that due to widespread voter fraud, victory in the 2020 United States presidential election was stolen from his client. We conclude that [Mr. Giuliani's] conduct immediately threatens the public interest and warrants interim suspension from the practice of law, pending further proceedings before the Attorney Grievance Committee.²³

Mr. Epshteyn knowingly and purposely worked alongside Mr. Giuliani in his effort to discredit the U.S. election system and overturn the fair and legitimate results. He should be held similarly accountable.

²³ *In the Matter of Rudolph W. Giuliani*, Supreme Court of the State of New York Appellate Division, First Judicial Dept., May 3, 2021, available at [https://www.nycourts.gov/courts/ad1/calendar/List_Word/2021/06_Jun/24/PDF/Matter%20of%20Giuliani%20\(2021-00506\)%20PC.pdf](https://www.nycourts.gov/courts/ad1/calendar/List_Word/2021/06_Jun/24/PDF/Matter%20of%20Giuliani%20(2021-00506)%20PC.pdf).

The Attorney Grievance Committee should investigate on the following bases:

1. During the course of representing Mr. Trump, Mr. Epshteyn knowingly made false statements of fact or law to third parties.

On November 17, 2020, Mr. Epshteyn stated in an [interview on Fox News with Lou Dobbs](#) that that Mr. Giuliani was presenting an argument as they spoke in a case in which, “We will lay out evidence, after evidence, after evidence of Republican poll watchers not being allowed to observe the count of absentee ballots...”

The Supreme Court of New York addressed this topic at length in its opinion suspending Mr. Giuliani’s license. Specifically, the Court noted that Mr. Giuliani “repeatedly represented to the court that his client, the plaintiff, was pursuing a fraud claim, when indisputably it was not.”²⁴ An attorney violates the Rules of Professional Conduct by “misrepresent[ing] the status of a pending proceeding, whether in or out of court.” Thus, the Court found that Mr. Giuliani’s misstatements about the allegations violated Rule 8.4(c), Rule 3.3, and Rule 4.1 because “they were made to third parties consisting of over 3,700 members of the press and the public.”²⁵

Mr. Epshteyn’s comments were also false and misleading. He did not make them to a tribunal, so Rule 3.3 is not implicated. Nevertheless, Rules 4.1 and 8.4(c) apply. Mr. Epshteyn falsely stated the nature of the proceedings and claims and did so to Mr. Dobbs and the viewers watching Fox News. As such, he violated Rule 4.1 and the misconduct was additionally dishonest, fraudulent, and a misrepresentation, thereby violating Rule 8.4(c).

2. Mr. Epshteyn persuaded others to engage in illegal conduct, which itself constitutes illegal behavior and reflects adversely on his honesty and trustworthiness.

Mr. Epshteyn’s own account of his actions places him at the Willard Hotel, in Washington, D.C., when he worked to advance the false elector scheme. The District of Columbia’s criminal conspiracy statute provides:

If 2 or more persons conspire either to commit a criminal offense or to defraud the District of Columbia or any court or agency thereof in any manner or for any purpose, each shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 5 years, or both, except that if the object of the conspiracy is a criminal offense punishable by less than 5 years, the maximum penalty for the conspiracy shall not exceed the maximum penalty provided for that offense.²⁶

²⁴ *In the Matter of Rudolph W. Giuliani*, Supreme Court of the State of New York Appellate Division, First Judicial Dept., May 3, 2021, available at [https://www.nycourts.gov/courts/ad1/calendar/List_Word/2021/06_Jun/24/PDF/Matter%20of%20Giuliani%20\(2021-00506\)%20PC.pdf](https://www.nycourts.gov/courts/ad1/calendar/List_Word/2021/06_Jun/24/PDF/Matter%20of%20Giuliani%20(2021-00506)%20PC.pdf).

²⁵ *Id.*

²⁶ Code of District of Columbia § 22-1805(a).

Additionally, the District's statute specifies that:

When the object of a conspiracy contrived within the District of Columbia is to engage in conduct in a jurisdiction outside the District of Columbia which would constitute a criminal offense under an act of Congress applicable exclusively to the District of Columbia if performed therein, the conspiracy is a violation of this section if ... Such conduct would also constitute a crime under the laws of the other jurisdiction if performed therein.²⁷

The District has forgery laws very similar in nature and scope to those outlined above.²⁸ These statutes all relate to conduct that, if engaged in, negatively reflect someone's honesty and trustworthiness.

Thus, Mr. Epshteyn's conduct likely violated the District's criminal conspiracy laws, based on his own public statements about his role and the fact that the group carried out the scheme.

Further, the false electors whom Mr. Epshteyn admits encouraging broke their states' respective laws regarding forgery and holding oneself out as a state official. As just two examples, in Georgia, the false electors violated the following statutes:

- 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.

In Wisconsin, the false electors broke the following statutes:

- Wis. Stat. § 943.38(1), which prohibits forgery;
- Wis. Stat. § 946.69(2), which prohibits falsely assuming to act as a public officer; and
- Wis. Stat. § 939.31, which prohibits conspiracy to commit criminal acts.

Various state attorneys general have also referred the matter to the U.S. Department of Justice to determine which federal statutes the false electors violated.

²⁷ *Id.*

²⁸ See Code of District of Columbia § 22-3241.

Mr. Epshteyn's acts bear directly on his honesty and trustworthiness and are grounds for discipline.

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

The entire enterprise that Mr. Epshteyn participated in involved dishonesty, fraud, deceit, and misrepresentation. Further, this ethical standard applies to conduct that occurs outside of a tribunal. Just as the Appellate Division found that Mr. Giuliani's conduct violated Rule 8.4, so, too, do Mr. Epshteyn's similar acts and statements.

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

Mr. Epshteyn worked closely with, and assisted, Mr. Giuliani as the latter carried out his effort to undermine the 2020 presidential election results and overturn the will of over 81 million voters. Because Mr. Epshteyn's work alongside Mr. Giuliani is uncontroverted – indeed, acknowledged, by Mr. Epshteyn – and because the Appellate Division has already found that Mr. Giuliani violated numerous Rules of Professional Conduct, Mr. Epshteyn violated Rule 8.4(a).

Further, Mr. Epshteyn participated in a concerted effort to pressure Mr. Pence to disregard his constitutional and statutory duties so that Mr. Trump could unlawfully reclaim the presidency.

When seven separate groups filed false certificates, a condition precedent of the scheme orchestrated, in part, by Mr. Epshteyn was satisfied. Several of the 84 false electors are lawyers. And these lawyers transmitted their false documents to the U.S. District Court, thereby violating their duty of candor to a tribunal.

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 the case of 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.²⁹

Thus, when the false electors sent their certificates to the United States Congress, they also violated Rule 3.3's duty of candor to a tribunal.

Mr. Epshteyn's violations do not end there.

²⁹ *United States v. Nordean*, 2021 WL 6134595 (D.C.D.C. 2021), at *6 (citations and quotation marks omitted).

After December 14, 2020, Mr. Eastman and Mr. Trump continued to apply significant private and public pressure on Mr. Pence to go along with the scheme. And they used the false electors as part of that effort. For example, while addressing the January 6, 2021 rally, Rudy Giuliani, [stated](#):

[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.

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.

And [Mr. Trump declared](#):

Despite that, despite that, we won Wisconsin. It's going to see. I mean, you'll see.

...

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.

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.³⁰ The insurrectionists injured over 138 police officers.³¹ To date, 769 people have been charged in connection with the January 6 insurrection, with 165 of those defendants pleading guilty, and courts have imposed sentences reaching over 60 months.³²

Thus, Mr. Epshteyn participated in a concerted effort to pressure Mr. Pence to disregard his constitutional and statutory duties so that Mr. Trump could reclaim the presidency. He knowingly and purposely assisted and encouraged other lawyers and others working in concert with lawyers to violate the Rules of Professional Conduct as part of that effort. The Rules establish that aiding other lawyers and others working with lawyers to violate such standards constitutes its own misconduct.

That members of our esteemed profession would engage in such actions – conduct that contributed to substantial harm to American democracy – should cause considerable distress within the entire legal community.

False statements intended to foment a loss of confidence in our elections and resulting loss of confidence in government generally damage the proper functioning of 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.

³⁰ 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/>.

³¹ 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>.

³² See <https://www.insider.com/all-the-us-capitol-pro-trump-riot-arrests-charges-names-2021-1>.

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.”³³ 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.”³⁴ 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.³⁵

Mr. Epshteyn abused his place of trust and played a significant role in fomenting discord, violence, and death, all through spreading lies and misinformation.

For the reasons set forth above, The 65 Project respectfully requests that the Grievance Committee investigate Mr. Epshteyn’s conduct and impose appropriate discipline. And because of the serious risk that Mr. Epshteyn will continue to engage in such behaviors, we request that you act on this matter with urgency.

Sincerely,



Michael Teter
Managing Director, The 65 Project

³³ *Ohralik v. Ohio State Bar Assn.*, 436 U.S. 447, 465 (1978).

³⁴ *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1056, 1072 (1991).

³⁵ See *In the Matter of Rudolph W. Giuliani*, Supreme Court of the State of New York Appellate Division, First Judicial Dept., May 3, 2021, available at [https://www.nycourts.gov/courts/ad1/calendar/List_Word/2021/06_Jun/24/PDF/Matter%20of%20Giuliani%20\(2021-00506\)%20PC.pdf](https://www.nycourts.gov/courts/ad1/calendar/List_Word/2021/06_Jun/24/PDF/Matter%20of%20Giuliani%20(2021-00506)%20PC.pdf).