



July 7, 2022

Harold E. Ciampoli, Jr.  
Office of Disciplinary Counsel  
820 Adams Avenue, Suite 170  
Trooper, PA 19403

VIA FACSIMILE: [REDACTED]

Dear Mr. Ciampoli:

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 Office of Disciplinary Counsel investigate the actions taken by Walter S. Zimolong III (Attorney Identification No. 89151) relating to his work as counsel of record in *Pirkle v. Wolf*, 4:20-cv-2088 (M.D. Pa.).

*Pirkle v. Wolf*, while short-lived, was part of an orchestrated effort across the country to sow unwarranted doubt about the integrity and outcome of the 2020 presidential election. The attorneys in *Pirkle* adopted, in their entirety and without any independent basis, the allegations contained in the complaint filed in *Donald J. Trump for President, Inc., et al. v. Boockvar*, 4:20-cv-02078 (M.D. Pa.). Additionally, the Complaint Mr. Zimolong filed sought to disqualify every vote in four counties that favored Joe Biden. Or, as Mr. Zimolong's co-counsel put it, "Every fucking one of them."<sup>1</sup> But, as the district court put it when dismissing the *Boockvar* matter:

One might expect that when seeking such a startling outcome, a plaintiff would come formidably armed with compelling legal arguments and factual proof of rampant corruption, such that this Court would have no option but to regrettably grant the proposed

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<sup>1</sup> Tony Cook & Johnny Magdaleno, *Top Indiana Election Attorney Rushes to Defend Trump's Fraud Claims, Then Quietly Retreats*, Indianapolis Star (Nov. 17, 2020), <https://www.indystar.com/story/news/politics/2020/11/17/top-indiana-election-drops-lawsuits-challenging-trump-loss-4-states/6258104002/>.

injunctive relief despite the impact it would have on such a large group of citizens.

That has not happened. Instead, this Court has been presented with strained legal arguments without merit and speculative accusations, unpled in the operative complaint and unsupported by evidence. In the United States of America, this cannot justify the disenfranchisement of a single voter, let alone all the voters of its sixth most populated state. Our people, laws, and institutions demand more.<sup>2</sup>

Additionally, the case-specific factual assertions of illegal voting that the attorneys in *Pirkle* did make were also made, nearly verbatim, in three other cases filed on the same day in Georgia, Michigan, and Wisconsin by one of Mr. Zimolong’s co-counsel.<sup>3</sup>

Mr. Zimolong’s actions in pursuing the *Pirkle* matter while lacking any factual or legal basis violated Pennsylvania’s Rules of Professional Conduct. “The primary purpose of our lawyer discipline system in Pennsylvania is to protect the public, preserve the integrity of the courts, and deter unethical conduct.” *Off. of Disciplinary Couns. v. Czmus*, 586 Pa. 22, 32–33, 889 A.2d 1197, 1203 (2005) (citing *In re Iulo*, 564 Pa. 205, 766 A.2d 335, 339 (2001)). “Truth is the cornerstone of the judicial system; a license to practice law requires allegiance and fidelity to truth.” *Office of Disciplinary Counsel v. Surrick*, 561 Pa. 167, 749 A.2d 441, 449 (2000) (citation omitted). “Whenever an attorney is dishonest, that purpose is served by disbarment.” *Office of Disciplinary Counsel v. Grigsby*, 493 Pa. 194, 425 A.2d 730, 733 (1981).

A full investigation by the Office of Disciplinary Counsel will demonstrate the egregious nature of Mr. Zimolong’s actions, especially when considered in light of his purposes, the direct and possible consequences of his behavior.

### **CONDUCT GIVING RISE TO THE COMPLAINT**

Donald Trump lost the 2020 presidential election.<sup>4</sup> He also lost Pennsylvania and its 20 electoral votes.<sup>5</sup> In an effort to overturn the legitimate results, Mr. Trump and his allies filed at least 65 baseless lawsuits across the country, alleging conspiracies and fraud and claiming the election

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<sup>2</sup> *Donald J. Trump for President, Inc., et al. v. Boockvar, et al.*, 4:20-cv-02078 (M.D. Pa.) Nov. 21, 2020 Memorandum Opinion (“Memorandum Opinion”) at 2.

<sup>3</sup> See *Langenhorst, et al. v. Pecore, et al.*, Case No. 1:20-cv-1701 (E.D. Wis.); *Brooks, et al. v. Mahoney, et al.*, Case No. 4:20-cv-00281 (S.D. Ga.); and *Bally, et al. v. Whitmer, et al.*, Case No. 1:20-cv-01088 (W.D. Mich.).

<sup>4</sup> See United States National Archives, Electoral College Results – 2020, available at <https://www.archives.gov/electoral-college/2020>.

<sup>5</sup> See Certificate of Ascertainment, Commonwealth of Pennsylvania, available at <https://www.archives.gov/files/electoral-college/2020/ascertainment-pennsylvania.pdf>.

was stolen. They brought these claims despite the fact that officials across the country and at every level of government have called the 2020 election “the most secure in American history.”<sup>6</sup>

None of Mr. Trump’s efforts succeeded. In some instances, courts have imposed sanctions on the lawyers who participated in the lawsuits and referred them for sanctions by their respective state bars.<sup>7</sup> The disciplinary arms of various state bars are pursuing the matters.<sup>8</sup>

With local counsel’s assistance, Mr. Zimolong filed the *Pirkle* matter on November 10, 2020. The Verified Complaint alleged that, “There exists sufficient evidence to place in doubt the November 3 presidential-election results in identified key counties. Some of that evidence follows.” From there, the complaint simply restates allegations from the complaint in *Donald J. Trump for President, Inc. v. Boockvar* – and attaches it as an exhibit. Specifically, Plaintiffs alleged:

- “In Philadelphia county, some voters were advised they needed to cure ballot defects while others were not. (Trump Compl., attached as Ex. 1, at ¶¶ 133-34, 136.) Poll watchers were excluded from access to canvassing locations. (Id. at ¶¶ 142, 145.)”<sup>9</sup>
- “In Montgomery county, a poll watcher overheard unregistered voters being advised to return later to vote under a different name that was registered in the poll book. (Id. at ¶ 117.)”<sup>10</sup>
- “In Delaware county, voters that were recorded to have received mail-in ballots were given regular ballots and not required to sign the registration book. (Id. at ¶ 125.) Poll watchers were granted extremely restricted access to a back room counting area. (Id. at ¶ 143.) And ballots received on Election Day were not separated from ballots received after 8 p.m. that day. (Id. at ¶ 151.)”<sup>11</sup>

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<sup>6</sup> Maria Henriquez, *Director of CISA Chris Krebs Says There's No Evidence of Foreign Interference in the 2020 Election*, Security Magazine (Nov. 5, 2020), <https://www.securitymagazine.com/articles/93846-director-of-cisa-chris-krebs-says-theres-no-evidence-of-foreign-interference-in-the-2020-election>.

<sup>7</sup> See, e.g., *King v. Whitmer*, Case No. 21-13134 (E.D. Mich.), Aug. 25, 2021 Opinion and Order, available at [https://www.michigan.gov/documents/ag/172\\_opinion\\_order\\_King\\_733786\\_7.pdf](https://www.michigan.gov/documents/ag/172_opinion_order_King_733786_7.pdf); *Washington Election Integrity Coalition United v. Inslee*, Case No. 100202-0, May 17, 2022 Clerk’s Ruling Setting Amount of Attorney Fees and Expenses, available at [https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Another/News/Press\\_Releases/029\\_Order\\_DeputyClerkRulingSetAttornyFees.pdf](https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Another/News/Press_Releases/029_Order_DeputyClerkRulingSetAttornyFees.pdf).

<sup>8</sup> See, e.g., *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); *State Bar Announced John Eastman Ethics Investigation*, available at <https://www.calbar.ca.gov/About-Us/News/News-Releases/state-bar-announces-john-eastman-ethics-investigation>; *State Bar Sues Trump Lawyer Sidney Powell*, available at <https://www.houstonchronicle.com/politics/texas/article/Texas-State-Bar-sues-Trump-lawyer-Sidney-Powell-16989673.php>; *Two Former U.S. Officials Help Ethics Probe of Trump Ally Clark*, *Source Says*, available at <https://www.reuters.com/world/us/exclusive-two-former-us-officials-help-ethics-probe-trump-ally-clark-source-says-2022-03-29/>.

<sup>9</sup> *Pirkle v. Wolf*, Case No. 4:20-cv-2088 (M.D. Pa.), Nov. 10, 2020, Compl. ¶ 18.

<sup>10</sup> *Id.* ¶ 19.

<sup>11</sup> *Id.* ¶ 20.

- “In Allegheny county, voters were required to vote provisionally because the records indicated they had requested to vote by mail when they had not. (Id. at ¶ 116.) Poll workers were reported to be close enough to voters so as to observe the actual vote. (Id. at ¶ 120.)”<sup>12</sup>
- “Throughout the state, voters received mail-in ballots without applying for them, in some cases receiving more than one. (Id. at ¶ 111.)”<sup>13</sup>
- “Throughout the state, in-person voters were advised they must vote provisionally because they had asked for and received a mail-in ballot, when no such request was made. (Id. at ¶ 112.) In some cases, they were outright denied the right to vote. (Id. at ¶ 113.)”<sup>14</sup>
- “It is estimated that over 680,000 ballots were processed without observation in Allegheny and Philadelphia counties. (Id. at ¶ 148.)”<sup>15</sup>

These allegations then led Plaintiffs to further contend: “This verified *evidence*, and the other verified *evidence* detailed in Trump Complaint, (id. at ¶¶ 51-61, 107-152), suffices to place in doubt the November 3 presidential-election results in identified counties and/or the state as a whole.”<sup>16</sup>

The Plaintiffs also alleged:

In addition to the foregoing evidence, Voters will provide evidence, upon information and belief, that sufficient illegal ballots were included in the results to change or place in doubt the November 3 presidential-election results. This will be in the form of expert reports based on data analysis comparing state mail-in/absentee, provisional, and poll-book records with state voter registration databases,<sup>1</sup> United States Postal Service (“USPS”) records, Social Security records, criminal-justice records, department-of-motor-vehicle records, and other governmental and commercial sources by using sophisticated and groundbreaking programs to determine the extent of illegal voters and illegal votes, including double votes, votes by ineligible voters, votes by phantom (fictitious) voters, felon votes (where illegal), non-citizen votes, illegal ballot harvesting, and pattern recognition to identify broader underlying subversion of the election results. Plaintiffs have persons with such expertise and data-analysis software already in place who have begun preliminary analysis of available data to which final data, such as the official poll list, will be added and reports generated.

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<sup>12</sup> *Id.* ¶ 21.

<sup>13</sup> *Id.* ¶ 22.

<sup>14</sup> *Id.* ¶ 23.

<sup>15</sup> *Id.* ¶ 24.

<sup>16</sup> *Id.* ¶ 25 (emphasis added).

Upon information and belief, the expert report will identify persons who cast votes illegally by casting multiple ballots, were deceased, had moved, or were otherwise not qualified to vote in the November 3 presidential election, along with evidence of illegal ballot stuffing, ballot harvesting, and other illegal voting. This evidence will be shortly forthcoming when the relevant official documents are final and available, for which discovery may be required, and the result of the analysis and expert reports based thereon will show that sufficient illegal ballots were included in the results to change or place in doubt the November 3 presidential-election results.<sup>17</sup>

The allegations outlined above represented the entirety of Plaintiffs' factual allegations – the entire premise for their request that the court order that not a single ballot from four populous counties supporting Joe Biden be counted.

Mr. Zimolong repeated the allegations and requested relief in a memorandum filed in support of a Motion for Declaratory and Permanent Injunctive Relief filed on November 12. That filing again simply cited to the Complaint filed in *Donald J. Trump for President, Inc. v. Boockvar*. The memorandum states:

Sufficient evidence exists to place in doubt the November 3 presidential-election results in identified key counties in two forms: (1) evidence of specific illegal actions and (2) analytical evidence from available data demonstrating illegal activities. Some evidence of the first follows. But Voters have moved to consolidate this case with the one brought by the Trump Campaign, see Ex. 1 (Trump campaign complaint), and rely primarily on the Trump Campaign to establish the first sort of evidence, some of which is described next.<sup>18</sup>

The memorandum then repeated the allegations from the Complaint that cite to the Trump Campaign's Complaint before offering that, "Voters are currently compiling analytical evidence of illegal voting from data they already have and are in the process of obtaining, some of which must come through expedited discovery (such as the final data on who actually voted)."<sup>19</sup>

On November 16, Mr. Zimolong notified the court that Plaintiffs were voluntarily dismissing the case without prejudice. Thus, in the six days the case was active, Mr. Zimolong:

- Filed a Verified Complaint that cited as its factual basis the allegations contained in a complaint in another matter;
- Alleged that expert evidence would show illegal voting;

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<sup>17</sup> *Id.* ¶¶ 26-27.

<sup>18</sup> *Pirkle v. Wolf*, Case No. 4:20-cv-2088 (M.D. Pa.), Nov. 12, 2020, Mem. in Support of Mot. for Declaratory and Permanent Injunctive Relief at 5.

<sup>19</sup> *Id.* at 8.

- Filed a motion to consolidate and expedite discovery;
- Filed a reply in support of the motion to consolidate and expedite discovery;
- Filed a motion, and memorandum in support, for declaratory relief and a permanent injunction, which offered the verified complaints as “evidence” and again stated that expert evidence would demonstrate illegal voting; and
- Voluntarily dismissed the matter.

As mentioned above, Mr. Zimolong’s co-counsel participated in three other matters across the country – and all three took the same form and contained nearly verbatim allegations. For example, Paragraphs 44-45 of the complaint filed in Wisconsin says:

In addition to the foregoing evidence, Voters will provide evidence, upon information and belief, that sufficient illegal ballots were included in the results to change or place in doubt the November 3 presidential-election results. This will be in the form of expert reports based on data analysis comparing state mail-in/absentee, provisional, and poll-book records with state voter-registration databases, United States Postal Service (“USPS”) records, Social Security records, criminal-justice records, department-of-motor-vehicle records, and other governmental and commercial sources by using sophisticated and groundbreaking programs to determine the extent of illegal voters and illegal votes, including double votes, votes by ineligible voters, votes by phantom (fictitious) voters, felon votes (where illegal), non-citizen votes, illegal ballot harvesting, and pattern recognition to identify broader underlying subversion of the election results. Plaintiffs have persons with such expertise and data-analysis software already in place who have begun preliminary analysis of available data to which final data, such as the official poll list, will be added and reports generated.

Upon information and belief, the expert report will identify persons who cast votes illegally by casting multiple ballots, were deceased, had moved, or were otherwise not qualified to vote in the November 3 presidential election, along with evidence of illegal ballot stuffing, ballot harvesting, and other illegal voting. This evidence will be shortly forthcoming when the relevant official documents are final and available, for which discovery may be required, and the result of the analysis and expert reports based thereon will show that sufficient illegal ballots were included in the results to change or place in doubt the November 3 presidential-election results.<sup>20</sup>

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<sup>20</sup> *Langenhorst, et al. v. Pecore, et al.*, Case No. 1:20-cv-1701 (E.D. Wis.), Nov. 12, 2020, Am. Compl. ¶¶ 44-45.

And Paragraphs 45-46 of the complaint filed in Georgia state:

In addition to the foregoing evidence, Voters will provide evidence, upon information and belief, that sufficient illegal ballots were included in the results to change or place in doubt the November 3 presidential-election results. This will be in the form of expert reports based on data analysis comparing state mail-in/absentee, provisional, and poll-book records with state voter-registration databases, United States Postal Service (“USPS”) records, Social Security records, criminal-justice records, Georgia Department of Driver Services records, and other governmental and commercial sources by using sophisticated and groundbreaking programs to determine the extent of illegal voters and illegal votes, including double votes, votes by ineligible voters, votes by phantom (fictitious) voters, felon votes (where illegal), non-citizen votes, illegal ballot harvesting, and pattern recognition to identify broader underlying subversion of the election results. Plaintiffs have persons with such expertise and data-analysis software already in place who have begun preliminary analysis of available data to which final data, such as the official poll list, will be added and reports generated.

Upon information and belief, the expert report will identify persons who cast votes illegally by casting multiple ballots, were deceased, had moved, or were otherwise not qualified to vote in the November 3 presidential election, along with evidence of illegal ballot stuffing, ballot harvesting, and other illegal voting. This evidence will be shortly forthcoming when the relevant official documents are final and available, for which discovery may be required, and the result of the analysis and expert reports based thereon will show that sufficient illegal ballots were included in the results to change or place in doubt the November 3 presidential-election results.<sup>21</sup>

In explaining these claims, Mr. Zimolong’s co-counsel stated, “There’s sufficient suspicion that [the election’s] been stolen. Our case does not end there. Our case begins there. We want the poll lists so that we can analyze the poll list to see if in fact it was stolen.”<sup>22</sup>

Mr. Zimolong’s co-counsel then voluntarily dismissed all four matters on the same day.

**A SUBSTANTIAL BASIS EXISTS FOR THE OFFICE OF DISCIPLINARY COUNSEL  
TO INVESTIGATE MR. ZIMOLONG’S CONDUCT AND TO  
IMPOSE APPROPRIATE DISCIPLINE**

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<sup>21</sup> *Brooks, et al. v. Mahoney, et al.*, Case No. 4:20-cv-00281 (S.D. Ga.), Nov. 11, 2020, Compl. ¶¶ 45-46.

<sup>22</sup> Tony Cook & Johnny Magdaleno, *Top Indiana Election Attorney Rushes to Defend Trump’s Fraud Claims, Then Quietly Retreats*, Indianapolis Star (Nov. 17, 2020).

The Office of Disciplinary Counsel should investigate Mr. Zimolong actions on the following basis:

1. Mr. Zimolong Violated Rule 3.1 By Bringing and Defending a Matter He Knew Lacked Merit

Rule 3.1 provides, in part, as follows: “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.”

Comment 2 states that: “The action is frivolous...if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law.”

Further, “[a] claim advanced in a proceeding is considered frivolous if it lacks any basis in law and fact.” *Adams v. Dep’t of Pub. Welfare*, 781 A.2d 217, 220 (Pa. Commw. Ct. 2001).

Mr. Zimolong made the decision to file a Verified Complaint in the United States District Court premised entirely on: (1) allegations made in a separate complaint in a different matter; and (2) speculation that experts would eventually be able to demonstrate illegal voting. The memorandum in support of the motion for declaratory relief and a permanent injunction confirm that these are the only two bases for the claims and requested relief.

To assess the merits of the allegations flowing from the Trump Campaign’s complaint, one can look to how the District Court and Third Circuit treated that filing. As a sampling of their views of the Trump Campaign’s effort:

- “This Court has been unable to find any case in which a plaintiff has sought such a drastic remedy in the contest of an election, in terms of the sheer volume of votes asked to be invalidated.”<sup>23</sup>
- “This Court has been presented with strained legal arguments without merit and speculative accusations, unpled in the operative complaint and unsupported by evidence.”<sup>24</sup>
- “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.”<sup>25</sup>
- Four times in the Third Circuit opinion, the Court refers to the Plaintiffs citing no authority for its propositions:
  - “The Campaign cites no authority suggesting that an actor discriminates by treating people equally while harboring a partisan motive, and we know of none.”<sup>26</sup>

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<sup>23</sup> Memorandum Opinion at 2.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 31.

<sup>26</sup> *Donald J. Trump for President, Inc.*, 830 F. App'x at 388.



- “[T]he Second Amended Complaint seeks breathtaking relief: barring the Commonwealth from certifying its results or else declaring the election results defective and ordering the Pennsylvania General Assembly, not the voters, to choose Pennsylvania’s presidential electors. It cites no authority for this drastic remedy.”<sup>27</sup>
- “It cites no federal authority regulating poll watchers or notice and cure. It alleges no specific discrimination. And it does not contest that it lacks standing under the Elections and Electors Clauses. These claims cannot succeed.”<sup>28</sup>
- “But nothing in the Due Process Clause requires having poll watchers or representatives, let alone watchers from outside a county or less than eighteen feet away from the nearest table. The Campaign cites no authority for those propositions, and we know of none. (Ditto for notice-and-cure procedures.) And the Campaign litigated and lost that claim under state law too.”<sup>29</sup>

Indeed, perhaps the Third Circuit said it most clearly: “Free, fair elections are the lifeblood of our democracy. Charges of unfairness are serious. But calling an election unfair does not make it so. Charges require specific allegations and then proof. We have neither here...*The Campaign’s claims have no merit.*”<sup>30</sup>

“Knowledge” under the Rules of Professional Conduct can be “inferred from circumstances.” Ample evidence demonstrates that Mr. Zimolong knew of the frivolous nature of the litigation he initiated. First, he relied on allegations generated by others as the primary bases for filing this matter. Both the District Court and Court of Appeals repeatedly refer to the Plaintiffs’ failure in that case to allege relevant facts or cite any authority for their legal propositions.<sup>31</sup> Further, these matters had already been litigated (and lost) as state-law claims, which was publicly available information.<sup>32</sup>

Moreover, the clear disconnect between the asserted injuries and requested relief would be apparent to any lawyer seeking to make a meritorious and redressable claim.

In fact, the pleadings themselves make clear that when filing the claims, Mr. Zimolong did not have a proper basis for bringing them because the Plaintiffs did not have even a shred of the evidence they claimed they would produce. As Mr. Zimolong’s co-counsel said, there was “suspicion” that the election was stolen and “our case begins there.”<sup>33</sup> The Complaint repeatedly states, “upon information and belief,” but as the Third Circuit said in rejecting the Trump Campaign’s appeal, “‘Upon information and Belief’ is a lawyerly way of saying that the Campaign does not know that something is a fact but just suspects it or has heard it.”<sup>34</sup>

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<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 389.

<sup>29</sup> *Id.* at 387.

<sup>30</sup> *Id.* at 381 (emphasis added).

<sup>31</sup> *See, e.g.*, Memorandum Opinion at 2; *Donald J. Trump for President, Inc.*, 830 F. App’x at 387.

<sup>32</sup> *Donald J. Trump for President, Inc.*, 830 F. App’x at 387.

<sup>33</sup> Tony Cook & Johnny Magdaleno, *Top Indiana Election Attorney Rushes to Defend Trump’s Fraud Claims, Then Quietly Retreats*, Indianapolis Star (Nov. 17, 2020).

<sup>34</sup> *Donald J. Trump for President, Inc.*, 830 F. App’x at 387.

Finally, the fact that Mr. Zimolong's co-counsel filed complaints containing nearly identical allegations in three other states that Mr. Biden won helps confirm that the efforts were part of a larger effort to undermine the legitimacy of the entire 2020 presidential election.

Mr. Zimolong knew the claims he was advancing in this matter lacked any basis in law or fact.

2. Mr. Zimolong Violated Rule 3.3 By Offering Evidence that He Knew to be False and by Making False Statements of Material Fact

Rule 3.3(a)(1) and (a)(3) provide that a "lawyer shall not knowingly make a false statement of material fact" or "offer evidence that the lawyer knows to be false."

Comment 3 confirms that, "An advocate is responsible for pleadings and other documents prepared for litigation," even when the lawyer is not responsible for the factual assertions contained therein.

Comment 5 states that, "Paragraph (a)(3) requires that the lawyer refuse to offer evidence that the lawyer knows to be false, regardless of the client's wishes." And, as discussed above, knowledge can be inferred.

Mr. Zimolong filed a "Verified Complaint" that attached the Trump Campaign's own verified complaint. In two separate filings, Mr. Zimolong stated that the Trump Campaign's complaint in *Boockvar* constituted "evidence" in the *Pirkle* matter, presumably because of the verification. But, for the same reasons that one can infer that Mr. Zimolong knew that the allegations lacked merit, it is similarly true that he knew that the factual allegations contained in the Trump Campaign's complaint lacked any basis.

In addition, in filings submitted to the District Court, Mr. Zimolong referred to the Plaintiffs' "Verified Complaint." But the verifications signed by Plaintiffs differed from the language provided in 28 U.S.C. § 1746 for unsworn declarations. The statute provides that the statement must be "in substantially the following form":

"I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).  
(Signature)."<sup>35</sup>

However, the verifications that Mr. Zimolong submitted included an important and subtle caveat:<sup>36</sup>

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<sup>35</sup> 28 U.S.C. § 1746.

<sup>36</sup> *Pirkle v. Wolf*, Case No. 4:20-cv-2088 (M.D. Pa.), Nov. 10, 2020, Compl. at p. 20-23.

3. I verify under penalty of perjury under the laws of the United States of America that the factual statements in this *Verified Complaint for Declaratory and Injunctive Relief* concerning me and my past and intended activities are true and correct to the best of my knowledge and understanding. 28 U.S.C. § 1746.

By cabining the verifications to only the “factual statements...concerning [Plaintiffs’] past and intended activities,” Mr. Zimolong minimized the reach and value of the verifications. In fact, it appears that the only verified paragraphs are the following:

6. All Plaintiffs are eligible registered voters in this State and were qualified to, and did, vote for a presidential candidate in the November 3, 2020 presidential election in this State.
7. Plaintiff LaMarr Pirkle is a retired pastor who resides in Centre County.
8. Plaintiff Theodore Dannert is a farmer who resides in Centre County.
9. Plaintiff Lauren Danks has been a nurse anesthetist for 13 years and resides in Centre County.
10. Plaintiff Casey Flynn is a corrections officer who resides in Montour County.

Those paragraphs are hardly the crux of the claims and yet, four separate times in the five-page Motion to Consolidate and Expedite Discovery, Mr. Zimolong noted the verified nature of the Complaint and referred to its allegations as evidence because of that:

- “Voters have presented evidence in their Verified Complaint...”<sup>37</sup>
- “In addition to the evidence alleged in the *Verified Complaint*...” (emphasis in original).<sup>38</sup>
- “In the *Verified Complaint*” (ECF No. 1), Voters allege that their Constitutional right to have has been infringed...” (emphasis in original).<sup>39</sup>
- “Voters also will be irreparably harmed if discovery is not expedited and have shown good cause in their *Verified Complaint* for such request” (emphasis in original).<sup>40</sup>

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<sup>37</sup> *Pirkle v. Wolf*, Case No. 4:20-cv-2088 (M.D. Pa.), Nov. 10, 2020, Mot. to Consolidate and to Expedite the Case and Discovery at 4.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 2-3.

<sup>40</sup> *Id.* at 3.

Mr. Zimolong offered evidence that was knowingly false in the form of the Trump Campaign complaint and then misrepresented a material fact to the Court – that Plaintiffs’ complaint was verified, when in fact, only five largely insignificant paragraphs were attested to.

That is not the candor that the Rules demand.

3. Mr. Zimolong Violated Rule 4.4 Command That Lawyers Respect the Rights of Third Parties

Pursuant to Rule 4.4, “In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person.”

Comment 1 to the Rule states, “Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons.”

In the interests of his clients, Mr. Zimolong sought to have millions of Pennsylvanians lose their right to vote. As his co-counsel said, “Every fricking one of them.”<sup>41</sup> In *Boockvar*, the District Court stated: “Granting Plaintiffs’ requested relief would necessarily require invalidating the ballots of every person who voted in Pennsylvania. Because this Court has no authority to take away the right to vote of even a single person, let alone millions of citizens, it cannot grant Plaintiffs’ requested relief.”<sup>42</sup>

The Court of Appeals went further, directly calling the requested relief one that would harm others:

Granting relief would harm millions of Pennsylvania voters too. The Campaign would have us set aside 1.5 million ballots without even alleging fraud. As the deadline to certify votes has already passed, granting relief would disenfranchise those voters or sidestep the expressed will of the people. Tossing out those ballots could disrupt every down-ballot race as well. There is no allegation of fraud (let alone proof) to justify harming those millions of voters as well as other candidates.<sup>43</sup>

In addition, Mr. Zimolong’s decision to file a complaint that relies almost exclusively on the factual allegations contained in a pending matter suggests that he had no proper purpose for bringing a separate lawsuit. He could have sought to intervene if he credibly believed that the plaintiffs he represented could aid the litigation. Instead, he wasted the court’s resources and unnecessarily burdened Defendants with additional litigation. That may have been Mr. Zimolong’s purpose. Or, instead, it could have been an effort to multiply the number of lawsuits

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<sup>41</sup> Tony Cook & Johnny Magdaleno, *Top Indiana Election Attorney Rushes to Defend Trump’s Fraud Claims, Then Quietly Retreats*, Indianapolis Star (Nov. 17, 2020).

<sup>42</sup> Memorandum Opinion at 32.

<sup>43</sup> *Donald J. Trump for President, Inc.*, 830 F. App’x at 390.

that Mr. Trump and his allies could publicly claim were filed to challenge the election. Whatever the motivation, the action served no proper purpose.

#### 4. Mr. Zimolong Engaged in Misconduct that Violates Rule 8.4

Under Rule 8.4, “It is professional misconduct for a lawyer to...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; [or] engage in conduct involving dishonesty, fraud, deceit or misrepresentation; [or] engage in conduct that is prejudicial to the administration of justice.”

Mr. Zimolong participated in a purposefully dishonest effort to undermine the 2020 election. He brought frivolous claims premised almost entirely on allegations contained in a complaint filed in another matter, referred to forthcoming “expert” evidence without providing any support for those assertions, labeled the Complaint as “verified,” even though no meaningful paragraphs were actually verified.

Mr. Zimolong misrepresented the availability of expert evidence to support the Verified Complaint’s allegations. He knew that expert reports did not exist that validated his “suspicion” about the election’s outcomes. If such expert reports were even partially complete, he would have provided some semblance of that work to support his filings. Further, he would not have voluntarily dismissed the complaint just six days after initiating the matter.

These actions further prejudiced the administration of justice – focusing the court’s and public’s attention on false, unsupported, and meritless claims and assertions.

Further, that Mr. Zimolong’s co-counsel brought nearly identical claims in four separate states, all challenging the results in counties Mr. Biden won demonstrates a deceitful purpose. It all amounted to a dishonest attempt to undermine the public confidence in the 2020 election. It is easy – indeed, necessary – to also recognize the direct link between the use of the courts to sow these seeds of doubt and confusion and the events of January 6, 2021, when people believing that the 2020 was stolen stormed the Capitol in a violent insurrection.

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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.”<sup>44</sup> 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.”<sup>45</sup> 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.

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<sup>44</sup> *Ohralik v. Ohio State Bar Assn.*, 436 U.S. 447, 465 (1978).

<sup>45</sup> *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1056, 1072 (1991).

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.<sup>46</sup>

Mr. Zimolong chose to use his professional license to assault our democracy. He came into Pennsylvania and pursued litigation that lacked any basis in law or fact. He participated in an organized effort to sow discord and doubt about the 2020 elections. He helped lead the charge in to disenfranchise millions of his fellow citizens because he did not like how they voted.

For the reasons set forth above, we respectfully request that the Office of Chief Disciplinary Counsel investigate Mr. Zimolong’s conduct and pursue appropriate discipline.

Sincerely,



Michael Teter  
Managing Director



On behalf of The 65 Project

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<sup>46</sup> *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).