



October 20, 2022

████████████████████
State Bar of Nevada, Office of Bar Counsel
3100 West Charleston Blvd., Suite 100
Las Vegas, NV 89102

Dear ██████████,

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 Bar Counsel investigate the actions taken by Jesse R. Binnall related to his representation of candidates for presidential electors on behalf of Donald J. Trump in his efforts to overturn the November 2020 election. Mr. Binnall chose to lend his law license to the assault on democracy by joining as Contestants' counsel in *Law v. Whitmer*, No. 82178 (Nev. Sup. Ct.), a case in which candidates for electors on behalf of Mr. Trump sought to have the court disenfranchise over one-and-a-half million voters.

The District Court of Nevada, which the Nevada Supreme Court affirmed, explained when denying the Contest that overturning an election has the “serious effect of disenfranchising voters.” *Law v. Whitmer*, 477 P.3d 1124, *17 (Nev. 2020). The court found that none of the Contestants' purported grounds for overturning the election under Nevada Statute § 293.410 were substantiated under “any standard of proof.”¹ Rather, Contestants failed to provide “any relevant and credible evidence” to substantiate any legal basis for overturning the election. *Id.* at *21. As a group of conservative judges and politicians later reported, “the court’s finding was that Trump and his supporters failed *even to offer* sufficient evidence” to support their claims.²

¹ Those grounds include: that there was a “malfunction of any voting device or electronic tabulator, counting device or computer in a manner sufficient to raise reasonable doubt as to the outcome of the election, that “illegal or improper votes were cast and counted” or “[l]egal and proper votes were not counted,” that “the election board or any member thereof was guilty of malfeasance,” and that “the defendant or any person acting, either directly or indirectly, on behalf of the defendant has given, or offered to give, to any person anything of value for the purpose of manipulating or altering the outcome of the election.”

² Lost, Not Stolen: The Conservative Case that Trump Lost and Biden Won the 2020 Presidential Election (July 2022), <https://lostnotstolen.org/>.

Nevada’s attorney disciplinary system serves to “inquire into the moral fitness of an officer of the court to continue in that capacity and to afford protection to the public, the courts and the legal profession.” *State B. of Nevada v. Claiborne*, 756 P.2d 464, 527–28 (Nev. 1988). Where an attorney has committed particularly egregious violations such as filing a frivolous claim, engaging in misconduct involving dishonesty, deceit, fraud, or misrepresentation, and acting with “blatant disregard... for the rights of others,” “disbarment is the only sanction that will adequately serve the purposes of attorney discipline: to protect the public and the integrity of the bar.” *In re Disc. of Schaefer*, 25 P.3d 191, 206 (Nev. 2001).

By filing and continuing to litigate a frivolous lawsuit untethered to either law or fact, and in seeking an extreme remedy of overturning the election – which would have the effect of curtailing the voting rights of all Nevadans – Mr. Binnall crossed the ethical standards to which he is bound and has demonstrated potential unfitness to continue in the profession. His conduct violated Rules of Professional Conduct 3.1 (Meritorious Claims and Contentions), 4.4 (Respect for Rights of Third Persons), and 8.4 (Misconduct). This office should consider all appropriate remedies to protect the public and the integrity of the bar, to include Mr. Binnall’s disbarment.

As evidence of Mr. Binnall’s violations of the Rules of Professional Conduct your office should consider the following (discussed in more detail in Sections I and II):

- That the Statement of Contest Mr. Binnall signed was full of inaccurate information, sweeping generalizations and mischaracterizations, and rather than reflecting facts, they reflected misinformation that Donald Trump’s lawyers were spreading in lawsuits across the country;
- That, even after Mr. Binnall had the opportunity to engage in discovery and present facts to the district court showing any merit to his claims, the district court rejected not only his legal conclusions but also every fact Contestants alleged;
- That in total, the court found that at least *twenty-nine* factual allegations Contestants made were not substantiated under “any standard of proof”;
- That Mr. Binnall offered a declaration from Donald Hartle claiming that someone had voted on behalf of his deceased wife as evidence of voter irregularities, when Mr. Hartle *later pled guilty to fraudulently casting that ballot himself*, creating a substantial question for this office to consider as to whether Mr. Binnall played a role in preparing or encouraging a fraudulent declaration;³
- That even though the district court made factual determinations subject to a “clearly erroneous” standard of review on appeal, and Mr. Binnall had no proof to support his allegations, he nevertheless pursued a frivolous appeal of the ruling to the Nevada Supreme Court.

In addition, *Law v. Whitmer* was not the only effort Mr. Binnall worked on to undermine the results of the November 2020 election. Mr. Binnall also wrote a letter to the Department of Justice requesting an investigation into “3,062 individuals who appear to have improperly cast ballots in the election.”⁴ In making this allegation, Mr. Binnall cited his analysis of a United

³ Eduardo Medina, *Nevada Man is Charged With Voting Using His Dead Wife’s Ballot*, N.Y. Times (Oct. 23, 2021), <https://www.nytimes.com/2021/10/23/us/voter-fraud-nevada.html>.

⁴ Letter from Shana Weir & Jesse Binnall to Attorney General William Barr, November 5, 2020, <https://s.wsj.net/public/resources/documents/Barr%20110520.pdf>.

States Postal Service database. However, users may not consult that database for purposes unrelated to mail services, such as evaluating voting claims, as commentators have noted.⁵ This additional work performed by Mr. Binnall on behalf of Donald Trump gives this office insight into his overall willingness to flout his ethical and legal responsibilities to further efforts to overturn the election.⁶

A full investigation by the Office of Bar Counsel will demonstrate the disturbing nature of Mr. Binnall's actions, especially considering his objectives and the direct and likely consequences of his behavior.

Further, we respectfully request that you expedite your investigation into this matter, as at least one prominent candidate for high office in the state has already made known his intent to claim fraud if the voters of Nevada elect his opponent.

BACKGROUND

Donald J. Trump lost the 2020 presidential election.⁷ Anticipating his loss, Mr. Trump and his allies began questioning the election's legitimacy months before even one voter had cast a ballot.⁸ In fact, this fit a pattern of Mr. Trump declaring fraud or a rigged election any time he lost or anticipated a loss.

Joe Biden received over 81 million votes in November 2020, defeating Mr. Trump by over seven million votes and over four percentage points.⁹ 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

⁵ Roger Sollenberger, *How Trump Lawyers May Have Violated Privacy Act and USPS Rules In Nevada Voter Fraud Lawsuit*, Alternet (Nov. 8, 2020), <https://www.alternet.org/2020/11/how-trump-campaign-lawyers-may-have-violated-privacy-act-and-usps-rules-in-nevada-voter-fraud-lawsuit/> (explaining that "anyone who accesses the data is required by law to sign a [form] promising the U.S. government that they will use the data exclusively for mailing purposes").

⁶ Mr. Binnall also owes the U.S. government over \$100,000 in unpaid taxes, further demonstrating his willingness to flout the law. Roger Sollenberger, *Top Trump Lawyer is a Longtime Tax Deadbeat*, The Daily Beast (May 6, 2022), <https://www.thedailybeast.com/top-trump-lawyer-jesse-binnall-is-a-longtime-tax-deadbeat>. He also allegedly committed malpractice by failing to inform a Virginia client about a potential plea bargain, demonstrating his willingness to violate ethical standards. *Id.*

⁷ See United States National Archives, *Electoral College Results – 2020*, available at <https://www.archives.gov/electoral-college/2020>.

⁸ 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>.

⁹ See Federal Election Commission, *Official 2020 Presidential General Election Results*, available at <https://www.fec.gov/resources/cms-content/documents/2020presgeresults.pdf>.

or lost votes or changed votes or was in any way compromised.”¹⁰ Mr. Trump fired him.¹¹ William Barr, Mr. Trump’s own Attorney General, declared that the Department of Justice had “not seen fraud on a scale that could have effected a different outcome in the election.”¹² 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.¹³

Many of Mr. Trump’s own senior advisors agreed with Attorney General Barr and Mr. Krebs.¹⁴ 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.¹⁵ 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.¹⁶ 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.”¹⁷

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

¹⁰ Maria Henriquez, *Director of CISA Chris Krebs Says there’s No Evidence of Foreign Interference into 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>.

¹¹ Alana Wise, *Trump Fires Election Security Director Who Corrected Voter Fraud Disinformation*, NPR (Nov. 17, 2020), <https://www.npr.org/2020/11/17/936003057/cisa-director-chris-krebs-fired-after-trying-to-correct-voter-fraud-disinformati>.

¹² Matt Zapatowsky et al., *Barr Says He Hasn’t Seen Fraud That Could Affect the Election Outcome*, Wash. Post (Dec. 1, 2020), https://www.washingtonpost.com/national-security/barr-no-evidence-election-fraud/2020/12/01/5f4dcaa8-340a-11eb-8d38-6aea1adb3839_story.html.

¹³ M. Balsamo, *Disputing Trump, Barr says no widespread election fraud*, Associated Press (Dec. 1, 2020), <https://perma.cc/4U8N-SMB5>.

¹⁴ 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>.

¹⁵ 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>

¹⁶ Interview of Jeffrey Rosen.

¹⁷ Interview with Richard Donoghue.

across the country.¹⁸ 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.¹⁹

CONDUCT GIVING RISE TO THE COMPLAINT

Mr. Binnall, and other lawyers filing similar lawsuits in the battleground states that Mr. Biden won, knew that they would not prevail on the merits. Instead, they were using the courts to further political propaganda. These lawyers for Mr. Trump littered their complaints with allegations of fraud and malfeasance. Then, Mr. Trump and his supporters publicly sought to bolster those false assertions by pointing to their legal filings.

Mr. Binnall's lawsuit in Nevada was a particularly egregious example of the practice of alleging misinformation in court and then later citing it to perpetuate those false claims about the election. Upon filing the *Law v. Whitmer* case, Mr. Binnall engaged in multiple media appearances reiterating the false claims he made in court.²⁰ Mr. Binnall even made the same false statements under oath in Senate testimony—after the court had already rejected them as false.²¹ Citing the allegations made in the *Law v. Whitmer* lawsuit, Mr. Trump perpetuated the false notion that the Nevada election had severe irregularities over Facebook:²²

¹⁸ W. Cummings, J. Garrison & J. Sergent, *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/>.

¹⁹ 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.

²⁰ See, e.g., *Jesse Binnall on Nevada Lawsuit: We are presenting to the court over 40,000 people who voted twice* (Dec. 2, 2020), Fox News, <https://www.youtube.com/watch?v=2u13vcZ-v8Q>.

²¹ Senate Homeland Security and Governmental Affairs Committee, Witness Statement of Jesse Binnall (Dec. 16, 2020), <https://www.hsgac.senate.gov/imo/media/doc/Testimony-Binnall-2020-12-16.pdf>.

²² Post from Donald. J. Trump's Facebook, <https://www.facebook.com/DonaldTrump/posts/10165913951510725>.



Donald J. Trump ✓

December 3, 2020 · 🌐

"Nevada 'fraud': 1,500 'dead' voters, 42,248 voted 'multiple times,' RV camps as 'homes'"



WASHINGTONEXAMINER.COM

Nevada 'fraud': 1,500 'dead' voters, 42,248 voted 'multiple times,' RV camps as 'homes'

The Trump campaign on Wednesday unveiled a tranche of information it plans to present to a Nevada sta...



Joe Biden is the President of the United States. Kamala Harris is the Vice President.

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Then, though the claims of widespread voter fraud were rejected by both a district court in Nevada and the Nevada Supreme Court, and evaluated and disclaimed by independent scholars, public officials, and news sources,²³ supporters of Mr. Trump continued to express their lies in the public. For example, Senator Ron Johnson tweeted, and Mr. Trump retweeted, Mr. Binnall's claims about the election in late December. He claimed these voter fraud allegations were true even though he had failed to offer any evidence supporting them in court, and despite the fact that both the District Court and the Nevada Supreme Court had rejected them as false:

²³ See, e.g., *McKenzie Sadeghi, Fact Check: Voter Fraud Claims In Nevada Based On Failed Lawsuit*, USA Today (Feb. 5, 2021), <https://www.usatoday.com/story/news/factcheck/2021/02/05/fact-check-viral-post-makes-false-claims-nevadas-election/4392902001/>.

 **Senator Ron Johnson** ✓
@SenRonJohnson

What happened in Nevada?

Here's the story from attorney @jbinnall who testified his whistleblower hotline never stopped ringing.

Yet the mainstream media and the Democrats accused him of making it all up, and the courts ignored his evidence.

hsgac.senate.gov/examining-irre...



⚠ This claim about election fraud is disputed

2:15 AM · Dec 22, 2020

♥ 40.5K 💬 19.8K people are Tweeting about this

Mr. Trump and his supporters have repeated these allegations at rallies and continued to press forward baseless complaints before Nevada state officials.²⁴ This disinformation effort – which Mr. Binnall’s legal work laid the groundwork for – has sowed distrust in democracy in Nevada. And public officials in Nevada have had to expend considerable time and resources to repeatedly debunking the claims. For example, Secretary of State Barbara K. Cegavske’s office issued a

²⁴ Jessica Hill, *2020 Elections: Conservatives Debunk Fraud Claims in Nevada, Elsewhere*, Las Vegas Sun (July 28, 2022), <https://lasvegassun.com/news/2022/jul/28/2020-election-lost-not-stolen-political-conservati/>.

report in 2021 again disavowing the repeated claims of voter fraud in Nevada, an effort which “consumed over 125 hours of staff time.”²⁵

Concerningly, Mr. Binnall may have even used his law license to promote insurrection, as a direct line exists between Mr. Binnall’s abuse of the court system and the January 6, 2021 attack on the United States Capitol. At least two named Contestants in the lawsuit Mr. Binnall signed and filed – Michael McDonald and James DeGraffenreid – received subpoenas from the House Select Committee investigating the January 6 attack on the U.S. Capitol for their role in the attacks and their December 2020 signing of fake electoral certificates purporting to cast Electoral College votes for Donald Trump.²⁶ Recently, FBI agents executed a search warrant on Mr. McDonald’s house in relation to his efforts to overturn the election and attack the Capitol.²⁷ Mr. Binnall was providing legal representation to Mr. McDonald and Mr. DeGraffenreid in a matter directly related to these efforts, which casts further doubt on his integrity and suitability to continue to practice law in Nevada. Indeed, Mr. Binnall continued to spread his false allegations of voter fraud in Nevada even after the January 6 attack.²⁸

Thus, by filing the Contest, Mr. Binnall lent his law license and the legal professional’s integrity and power to an orchestrated effort to undermine our nation’s elections so that the person who lost the 2020 presidential election could remain in power. Indeed, other lawyers in Mr. Binnall’s position recognized they were part of a baseless effort to undermine American democracy and withdrew from these lawsuits and renounced their efforts.²⁹ Mr. Binnall did not, choosing instead to continually spread false information and seek to disenfranchise Nevada’s voters.

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

The Office of Bar Counsel should investigate Mr. Binnall’s actions on the following bases:

²⁵ Election Integrity Violation Reports, Nevada Secretary of State Barbara Cegasyke (Apr. 21, 2021), <https://www.nvsos.gov/sos/home/showpublisheddocument?id=9428>.

²⁶ Hugh Jackson and April Corbin Girnus, *January 6 Panel Subpoenas Nevada Fake Electors McDonald, DeGraffenreid*, Nevada Current (Jan. 28, 2022), <https://www.nevadacurrent.com/2022/01/28/january-6-panel-subpoenas-nevada-fake-electors-mcdonald-degraffenreid/>.

²⁷ David Charns, I-Team Sources: FBI Seizes Nevada GOP Chairman’s Phone As Part Of Fake Elector Investigation, 8 News Now (June 22, 2022), https://www.8newsnow.com/i-team/i-team-sources-fbi-seizes-nevada-gop-chairmans-phone-as-part-of-fake-elector-investigation/?utm_medium=referral&utm_source=t.co&utm_campaign=socialflow.

²⁸ Jesse Binnall Twitter page @jbinnall, (Jan. 7, 2021), <https://twitter.com/jbinnall/status/1347344777788981249>.

²⁹ Rachel Abrams, et al., *Once Loyal to Trump, Law Firms Pull Back from His Election Fight*, N.Y. Times, Nov. 13, 2020, available at <https://www.nytimes.com/2020/11/13/business/porter-wright-trump-pennsylvania.html>.

1. Mr. Binnall Violated Rule 3.1 By Bringing and Defending a Matter Which He Knew or Should Have Known 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 of the ABA Rules of Professional Conduct³⁰ 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.”

As the District Court and the Nevada Supreme Court’s treatment of the matter indicate, the Complaint that Mr. Binnall signed and filed lacked any basis in law or fact.

First, all evidence indicates that Mr. Binnall knowingly propagated false allegations of voter fraud. Regarding the Contestants’ central claim that “fraud occurred at multiple points in the voting process in Nevada in rates that exceed the margin of victory in the presidential race,” the court found that these allegations “strain credulity.” *Law v. Whitmer*, 477 P.3d 1124, *9 (Nev. 2020). On the issue of voter fraud, the court found that “none of the grounds [in the Contest] contains persuasive evidence...that there were fraudulent activities associated with [the 2020 election]” that produced fraudulent votes affecting vote margins. *Id.* at *10.

Further, the court rejected, citing a lack of any credible evidence, claims that:

- There were irregularities with the provisional balloting process, *id.*,
- Voting machines malfunctioned and accepted invalid signatures, *id.* at *11,
- 1,000 illegal or improper votes were counted, and 1,000 legal votes were not counted, *id.*,
- Voters cast multiple ballots unlawfully, *id.*,
- Election workers were pressured to count invalid votes, *id.* at *12,
- Votes from deceased voters were improperly cast and counted, *id.*,
- Voters were impersonated by others who cast ballots in their names, *id.*,
- Election officials counted untimely ballots, *id.*,
- Election officials marked choices for unfilled questions, *id.* at *14,
- Counties prevented individuals from observing the counting of ballots, *id.*

Rather than reflecting any on-the-ground truth of events which occurred in Nevada, these allegations echoed baseless allegations that Mr. Trump’s attorneys made—and courts squarely rejected—in other lawsuits around the country at the same time.³¹

³⁰ The State of Nevada has not adopted the official comments to the ABA Model Rules; however, the comments “may be consulted for guidance in interpreting and applying the Nevada Rules of Professional Conduct, unless there is a conflict between the Nevada Rules and the ... comments.” *In re Seare*, 493 B.R. 158, 183 (Bankr. D. Nev. 2013), *as corrected* (Apr. 10, 2013), *aff’d*, 515 B.R. 599 (Bankr. App. 9th Cir. 2014).

³¹ See, e.g., *Donald J. Trump for President, Inc., et al. v. Boockvar, et al.*, 4:20-cv-02078 (M.D. Pa.).

When given the chance to develop and offer actual evidence, Mr. Binnall could not do so. Rather, he failed to comply with evidentiary rules and flouted deposition deadlines. *Whitmer*, 477 P.3d at *9. Then, he provided mainly hearsay evidence in the form of declarations to substantiate the Contestants' claims, even though the election contest statute requires evidence from depositions.³² The court found that these "declarations were self-serving statements of little or no evidentiary value." *Whitmer*, 477 P.3d at *9.

Mr. Binnall also failed to offer any credible experts. Representing the Contestants, he put forth three experts all of whom the court found had "questionable" or "unsound" methods and who could not offer data sources, verification, or evidence supporting their methods or conclusions. *Id.* The court found that it "could have excluded" consideration of these experts altogether based on the "failure of these experts to verify the data they were relying on." *Id.* at *15-16.

What's more, Mr. Binnall submitted a false declaration from a declarant *who later admitted that he committed fraud in its preparation*. Mr. Binnall presented a declaration from Donald Kirk Hartle, a Clark County man who alleged, as evidence of election irregularities, that a ballot was cast in his late wife's name. However, subsequent investigation showed that it was in fact Mr. Hartle who voted in his wife's name, and Mr. Hartle has pled guilty to a voting violation.³³ Attorney General Aaron Ford noted in a later statement that Mr. Hartle's allegations were part of an effort to spread "inaccurate information" about the election and Clark County District Court Judge Carli Kierney called his allegations a "political stunt."³⁴

Moreover, Mr. Binnall advocated for the overturning of the November 2020 election results even though he either "knew or should have known" that Contestants had no "reasonable or nonfrivolous basis" warranting this extraordinary remedy. *In re Martinez*, 393 B.R. 27, 36 (Bankr. D. Nev. 2008). "Knowledge" under the Rules of Professional Conduct can be "inferred from circumstances."³⁵ There is ample indication that Mr. Binnall knew that his claims were frivolous. As explained previously, as Mr. Binnall continued to press false claims of fraud, members of Trump's own cabinet publicly disclaimed the allegations about widespread fraud and irregularities, including in Nevada. As the District Court's ruling made clear, when given the chance to substantiate his baseless claims on the merits, Mr. Binnall could not do so. Nevertheless, he continued to litigate these frivolous claims – including by pursuing an appeal. Moreover, any attorney seeking to make a redressable claim in good faith would have realized

³² An election contest "matter shall be tried and submitted so far as may be possible upon depositions and written or oral argument as the court may order." Nev. Rev. Stat. Ann. § 293.415.

³³ Michael Lyle, *Man Used by GOP to Push Unfounded Voter Fraud Claims Pleads Guilty to Casting Ballot Under Late Wife's Name*, Nevada Current (Nov. 16, 2021), <https://www.nevadacurrent.com/blog/man-used-by-gop-to-push-unfounded-voter-fraud-claims-pleads-guilty-to-casting-ballot-under-late-wifes-name/>; Attorney General Ford Announces Voter Fraud Charges, Nevada Attorney General Aaron Ford (Oct. 21, 2021), https://ag.nv.gov/News/PR/2021/Attorney_General_Ford_Announces_Voter_Fraud_Charges/.

³⁴ Associated Press, *'Cheap Political Stunt': Las Vegas Man Pleads Guilty to Voting Twice in 2020*, Reno Gazette Journal (Nov. 17, 2021), <https://www.rgj.com/story/news/2021/11/17/judge-las-vegas-mans-donald-kirk-hartle-vote-fraud-claim-cheap-political-stunt/8656616002/>.

³⁵ Rule 1.0(f).

that no evidence supported these claims (or at the very least, ceased to litigate them when it became apparent that they could produce no evidence).

Even in the unlikely event that Mr. Binnall did not know the claims were frivolous and part of an effort to overturn the election, Mr. Binnall had an independent duty to inquire into the claims in order to avoid filing a baseless lawsuit; his own failure to do so is no defense. Under Nevada law, “[a] lawyer may not” do “whatever the client requested, regardless of whether it was reasonable or justified by the facts.” *Martinez*, 393 B.R. at 36. Rule 3.1 demands more – it requires that “a lawyer to exercise independent judgment with respect to claims a client wishes to bring and to decline to pursue claims that are frivolous.” “Simply following client’s orders” is not a defense; rather, “[t]he smooth functioning of the courts and the interests of justice always trump a client's unreasonable demands.” *Id.* at 37.

2. Mr. Binnall Violated Rule 4.4’s 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, or use methods of obtaining evidence that violate the legal rights of such a person.”

ABA 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.”³⁶

In the interests of his clients, Mr. Binnall sought to remove the voting rights of more than one-and-a-half million Nevadans by overturning the results of a fair and free election. Further, his lawsuit can be seen only as a part of a widespread effort to delay and burden the process of tallying the votes of Nevada residents in the November 2020 election and to discredit the results of their votes in the eyes of the public. The District Court and the Nevada Supreme Court recognized that Mr. Binnall’s requested remedy of overturning the election would harm others when it noted that an “election contest, if successful, has the serious effect of disenfranchisement of the voters.” *Whitmer*, 477 P.3d 1124 at *17.

3. Mr. Binnall 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. Binnall participated in a purposefully dishonest effort to undermine the 2020 election. He brought frivolous claims that the Constitution, prior court decisions, and relevant statutes barred. The bare “factual” bases he relied on were supported by false statements and wild speculation.

³⁶ *Seare*, 493 B.R. at 183 (explaining that the ABA Comments may be used to interpret the Nevada Rules of Professional Conduct).

As both the District Court and the Nevada Supreme Court found, no evidence supported the claims Mr. Binnall advanced.

Mr. Binnall also may have engaged in conduct involving fraud, deceit, or misrepresentation by filing the Hartle Declaration, a document which, as explained previously, Mr. Hartle later admitted was untrue. An attorney has acted in violation of Rule 8.4 when they “acting in bad faith, file[] documents” that they “knew, or should have known” to be false. *In re Pagaduan*, 429 B.R. 752, 761 (Bankr. D. Nev. 2010), *order aff’d in part, vacated in part*, 447 B.R. 614 (D. Nev. 2011). Further investigation into Mr. Binnall’s conduct in preparing and filing the Hartle Declaration by this office is warranted.

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.”³⁷ 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.”³⁸ Although attorneys, of course, maintain First Amendment rights, the actions in question here cross far beyond protected speech.³⁹ 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.

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. As the Supreme Court of New York explained when considering Rudolph Giuliani’s role in similarly filing frivolous election challenges and promoting disinformation about the November 2020 elections:

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.⁴⁰

³⁷ *Ohralik v. Ohio State Bar Assn.*, 436 U.S. 447, 465 (1978).

³⁸ *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1056, 1072 (1991).

³⁹ Even in the context of a lawyer running for office, which Mr. Binnall was not, the Nevada Supreme Court has held that “[t]he guarantee of freedom of speech will not protect a lawyer in the context of a political campaign from disciplinary action ... if he is guilty of known falsehood intentionally used and published for the purpose of misleading the voters and gaining personal advantage for himself or his candidate.” *In re Disc. of Hafter*, 381 P.3d 623 (Nev. 2012) (internal quotation marks and citations omitted).

⁴⁰ *In the Matter of Rudolph W. Giuliani*, Supreme Court of the State of New York Appellate Division, First Judicial Dept., May 3, 2021 at 30-31.

Mr. Binnall chose to offer his professional license to an assault on our democracy. He 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 Nevada 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 Bar Counsel investigate Mr. Binnall's conduct and pursue appropriate discipline.

Sincerely,



Michael Teter
Managing Director


On behalf of The 65 Project