



February 15, 2023

VIA ELECTRONIC MAIL: [REDACTED]

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

Dear General Counsel's Office:

The 65 Project is a bipartisan, nonprofit effort to protect democracy from abuse of the legal system by holding accountable lawyers who engage in fraudulent, unethical conduct seeking to overturn legitimate election results.

We request that the General Counsel's Office investigate the actions taken by Stefan Passantino in his representation of Cassidy Hutchinson. Ms. Hutchinson served in the Trump Administration as an assistant to Chief of Staff Mark Meadows. The United States House Select Committee on the January 6th Attack ("Select Committee") subpoenaed Ms. Hutchinson. Mr. Passantino represented Ms. Hutchinson at the request of people within Mr. Trump's circle, who also paid for Mr. Passantino to act as Ms. Hutchinson's attorney. Ultimately, Ms. Hutchinson gave a [sworn interview](#) to the Select Committee that demonstrates that Mr. Passantino – who served as the top ethics lawyer in the Trump Administration – violated multiple provisions of the Rules of Professional Conduct. The Select Committee has confirmed its view that Mr. Passantino, acting as Ms. Hutchinson's attorney, sought to obstruct the Select Committee's inquiry to uncover the full context of the January 6th attack on our nation's Capitol.

A full investigation by the General Counsel's Office will demonstrate the egregious nature of Mr. Passantino's actions, especially when considered in light of his intent, in his conduct's premeditation, and given his prior role as an attorney advising the Trump Administration on ethics.

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

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

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.

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

And White House Counsel Pat Cipollone also recently testified that no evidence existed regarding election fraud sufficient to change the results in any state and that Mr. Trump should have conceded on December 14, 2020, when states certified their electoral votes.

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>.

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.

FACTS GIVING RISE TO COMPLAINT

Mr. Passantino committed multiple ethics violations during his representation of Cassidy Hutchinson.

First, Mr. Passantino engaged in conduct that amounted to an obstruction of an investigation. Mr. Passantino advised Ms. Hutchinson to provide as little information as possible to the Select Committee, with the intention of foiling the Select Committee's fact-finding capabilities and slowing the pace of the investigation. The Select Committee discovered, what Representative Lofgren called, a "strategy to prevent the Committee from finding the truth."⁹

Mr. Passantino advised his client against speaking truthfully to the Select Committee, telling her: "[i]f you don't 100 percent recall something, even if you don't recall a date or somebody who may or may not have been in the room, that's an entirely fine answer, and we want you to use that response as much as you deem necessary."¹⁰

Ms. Hutchinson was worried she had committed perjury by saying she did not recall things she could, in fact, recall. Mr. Passantino was undeterred, and told Ms. Hutchinson that "[t]hey don't know what you know, Cassidy. They don't know that you can recall some of these things. So you saying 'I don't recall' is an entirely acceptable response to this."¹¹ This is deeply troubling. Mr. Passantino attempted to prevent the Select Committee from finding out the truth by advising his client to evade questioning and answer dishonestly. His client was able to remember key events and had unique insight and access to events leading up to the attack on January 6th. Instead of aiding the Select Committee, Mr. Passantino worked to undermine the committee's goals and in turn, violated his profession's code of conduct.

His other tactic was to prepare his client as little as possible, in the hopes she would be less able to answer basic questions during her testimony. He refused to do a mock testimony and told her to avoid reading relevant stories on the internet, creating calendars to sort through memories, and even make notes for her testimony, saying the "less you remember, the better. Don't read anything to try to jog your memory. Don't try to put together timelines."¹² He wanted Ms. Hutchinson to stonewall the investigation and provided counsel in order to obstruct the Select Committee.

⁹ Katelyn Polantz, et al., *Exclusive: Trump's Former White House Ethics Lawyer Told Cassidy Hutchinson to Give Misleading Testimony to January 6 Committee, Sources Say*, CNN (Dec. 21, 2022), <https://www.cnn.com/2022/12/20/politics/trump-ethics-lawyer-passantino-cassidy-hutchinson-misleading-testimony-jan-6/index.html>.

¹⁰ *Select Committee to Investigate the January 6th Attack on the U.S. Capitol, U.S. House of Representatives*, 117th Cong. 36 (2022) (interview with Cassidy Hutchinson, Sept. 14, 2022), <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000928888/pdf/GPO-J6-TRANSCRIPT-CTRL0000928888.pdf>.

¹¹ *Id.* at 55.

¹² *Id.* at 48.

To be clear, Ms. Hutchinson was not accused or suspected by the Select Committee of any wrongdoing. It was not in her interest to keep quiet about details she recalled. Instead, Mr. Passantino was apparently serving some other interest in advising his client in this way.

Second, Mr. Passantino breached confidentiality guidelines and shared information against his client's wishes. Time and time again, Mr. Passantino expressly went against his client's wishes, and shared information with people unrelated to providing legal counsel to Ms. Hutchinson. Over her objections, Mr. Passantino discussed Ms. Hutchinson's testimony with the Select Committee with journalist Maggie Haberman, Mark Meadows' attorneys George Terwilliger and John Moran, and with his law partners.¹³

Third, Mr. Passantino accepted funding for his representation of Ms. Hutchinson that compromised his professional responsibility to his client. Mr. Passantino was able to represent Ms. Hutchinson because he received payments by the Trump political action committee, Save America.¹⁴ Not only did he refuse to tell his own client the source of the funding, but being funded by Save America compromised his professional responsibility to his client by causing him to be more interested in protecting his funding source than promoting the well-being of his client.

When asked directly by Ms. Hutchinson about the source of the funding, Mr. Passantino intentionally kept her in the dark, and stated that, "[i]f you want to know at the end, we'll let you know, but we're not telling people where funding is coming from right now. Don't worry, we're taking care of you."¹⁵

Not only did he not inform his own client about how he was financially able to represent her, thereby denying her the ability to give informed consent to the representation, but he purposefully represented her with the intention of protecting the reputation of third parties at the expense of his client. Mr. Passantino sought to use Ms. Hutchinson's testimony to protect those within Trump's orbit, including Trump himself. When advising her on how to manage her first interview with the Select Committee, Mr. Passantino told Ms. Hutchinson that "[w]e just want to focus on protecting the President. We all know you're loyal."¹⁶ Furthermore, Mr. Passantino worked to make sure Ms. Hutchinson never spoke about matters that could embarrass former President Trump and said, "[n]o, no, no, no, no. We don't want to go there. We don't want to talk about that," when asked about answering questions about the story of Trump attempting to strangle a secret service member to join the mob on January 6.¹⁷ Mr. Passantino then tried to get

¹³ *Id.* at 98-101.

¹⁴ Katelyn Polantz, et al., *Exclusive: Trump's Former White House Ethics Lawyer Told Cassidy Hutchinson to Give Misleading Testimony to January 6 Committee, Sources Say*, CNN (Dec. 21, 2022), <https://www.cnn.com/2022/12/20/politics/trump-ethics-lawyer-passantino-cassidy-hutchinson-misleading-testimony-jan-6/index.html>.

¹⁵ ¹⁵ *Select Committee to Investigate the January 6th Attack on the U.S. Capitol, U.S. House of Representatives*, 117th Cong. 22 (2022) (interview with Cassidy Hutchinson, Sept. 14, 2022), <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000928888/pdf/GPO-J6-TRANSCRIPT-CTRL0000928888.pdf>.

¹⁶ *Id.* at 50.

¹⁷ *Id.* at 34.

Ms. Hutchinson to testify in a way that would protect other members of the Trump White House, such as Eric Herschmann.¹⁸

Because of her testimonies, Mr. Passantino was pleased at how little she said to the Select Committee, and how her testimony would protect others. To reassure Ms. Hutchinson that stonewalling the Select Committee to protect other people in Trump's orbit was actually for her own best interest, Mr. Passantino said that "Trump world is not going to be mad at you. Don't worry. Like, the boss is not going to be mad at anything you're saying right now. Like, you're handling it right. We have your back."¹⁹ This sentiment, alongside previously discussed issues of confidentiality, led Ms. Hutchinson to conclude that Mr. Passantino is "doing what he thinks is best for Trump and the people in Trump's orbit, and he doesn't care about whether or not I agree with that sentiment or not, even though it's my testimony and my experience with the committee."²⁰

**A SUBSTANTIAL BASIS EXISTS FOR THE GENERAL COUNSEL'S OFFICE
TO INVESTIGATE MR. PASSANTINO'S CONDUCT AND TO
IMPOSE APPROPRIATE DISCIPLINE**

The General Counsel's Office should investigate Mr. Passantino's actions on the following basis:

1. Mr. Passantino Violated Rule 1.6 By Breaching Confidentiality With His Client

Under Rule 1.6, "a lawyer shall not knowingly: (1) reveal a confidence or secret of the lawyer's client; (2) use a confidence or secret of the lawyer's client to the disadvantage of the client; (3) use a confidence or secret of the lawyer's client for the advantage of the lawyer or of a third person."²¹

Mr. Passantino violated Rule 1.6 by sharing information about his client to journalist Maggie Haberman, attorneys for Mark Meadows, George Terwilliger and John Moran, and his law partners. The General Counsel's Office needs to investigate Mr. Passantino to discover the depth of the disclosure. Ms. Hutchinson did not consent to these conversations, and was clearly embarrassed at the prospect of information concerning her testimony being shared outside the scope of her legal representation. Ms. Hutchinson was deeply worried about retaliation among those in Trump's orbit if they knew she was cooperating with the Select Committee, and Mr. Passantino's willful violation of Rule 1.6 could have caused direct harm to his client.

2. Mr. Passantino Violated Rule 1.7 Because His Professional Responsibility Was Compromised Due to His Interest in Third Parties

Pursuant to Rule 1.7, "a lawyer shall not represent a client with respect to a matter if . . . [t]he lawyer's professional judgment on behalf of the client will be or reasonably may be adversely

¹⁸ *Id.* at 44.

¹⁹ *Id.* at 76.

²⁰ *Id.* at 101.

²¹ Rule 1.6 (a)

affected by the lawyer's responsibilities to or interests in a third party or the lawyer's own financial, business, property, or personal interests."²²

Mr. Passantino has repeatedly exhibited a stronger interest in third parties than his own client. Mr. Passantino worked to make sure his client did not embarrass others, at the expense of his client being truthful and forthcoming with the Select Committee. He sought to guarantee that Ms. Hutchinson would protect those in the Trump White House, and wanted Ms. Hutchinson to testify in a way that would not make "the boss" mad at her. His compromised professional responsibility and indebtedness to third parties was so apparent that Ms. Hutchinson, his own client, did not believe he was truly on her side. She believed he was simply there to help other people in Trump's orbit, including Trump himself, evade responsibility for their conduct. Mr. Passantino violated Rule 1.7 by working to help other people at the expense of his client's interests.

3. Mr. Passantino Violated Rule 1.8 By Not Fully Informing His Client on the Source of Compensation and By Having His Source of Compensation Interfere with His Professional Judgement

Rule 1.8, states, as follows, "[a] lawyer shall not accept compensation for representing a client from one other than the client unless: (1) The client gives informed consent after consultation; (2) There is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and (3) Information relating to representation of a client is protected as required by Rule 1.6."²³

Mr. Passantino violated Rule 1.8 because he failed to provide his client with adequate information about his funding source for his client to give informed consent. In fact, he purposefully kept her in the dark, where at key moments he refused to tell her the source of his compensation. By purposefully keeping his client in the dark, Ms. Hutchinson was unable to assess how the compensation may impact Mr. Passantino's representation.

Furthermore, the funding source, the PAC "Save America", interfered with Mr. Passantino's independence of professional judgement. Because the funds came from Trump and those within Trump's orbit, Mr. Passantino had to protect his funders from scrutiny from the Select Committee. He no longer was representing Ms. Hutchinson to help her navigate her testimonies with the Select Committee, instead, he was representing Ms. Hutchinson to shield former President Trump and his allies from legal liability. Mr. Passantino simply used his client to "protect" "the boss" from the Select Committee.

4. Mr. Passantino Engaged in Conduct that Violated Rule 8.4

According to Rule 8.4, "[i]t is professional misconduct for a lawyer to . . . (d) Engage in conduct that seriously interferes with the administration of justice."²⁴

²² Rule 1.7 (b)

²³ Rule 1.8 (e)

²⁴ Rule 8.4

Mr. Passantino violated Rule 8.4 by engaging in obstruction of an investigation and seriously undermining the ability of the Select Committee to fulfill its fact-finding objective. Instead of cooperating with the Select Committee, and having his client testify to what she knows, Mr. Passantino sought to stonewall the Select Committee to prevent uncomfortable and embarrassing facts from coming to light. He advised Ms. Hutchinson to say she “did not recall” facts that she did recall, telling her that the Select Committee did not “know that you can recall some of these things. So you saying 'I don't recall' is an entirely acceptable response to this.” He also advised her to prepare as little as possible and to refrain from reading up on the matter, in the hopes that she may forget key facts during her testimony.

Mr. Passantino engaged in a dishonest effort to obstruct a necessary inquiry into an insurrection on our nation’s Capitol. His goal was to prevent the Select Committee from completing its investigation. Mr. Passantino’s interference with the administration of justice should not go unpunished.

For the reasons set forth above, we respectfully request that the General Counsel’s Office investigate Mr. Passantino’s conduct and pursue appropriate discipline.

Sincerely,



Michael Teter
Managing Director, The 65 Project

