



REFLECTIONS ON GIULIANI'S SUSPENSION OF HIS NEW YORK BAR LICENSE

Posted on June 26, 2021 by Cyrus Mehta

The [temporary suspension](#) of Rudolph Giuliani's bar license by a New York appellate court for making false statements on behalf of Donald Trump's election is thought provoking for lawyers, especially those who have opposed Trump and continue to oppose him.

The court wrote that "these false statements were made to improperly bolster respondent's narrative that due to widespread voter fraud, victory in the 2020 United States presidential election was stolen from his client." The court further stated that "respondent's conduct immediately threatens the public interest and warrants interim suspension from the practice of law, pending further proceedings before the Attorney Grievance Committee."

Giuliani's temporary suspension is based specifically on New York Rules of Professional Conduct 3.3, 4.1 and 8.4 while he was serving as Trump's lawyer.

Rule 3.3 provides that: "(a) A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal"

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,"

Rule 8.4 provides that "A lawyer or law firm shall not: . . . (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation, . . . or (h) engage in any other conduct that adversely reflects on the lawyer's fitness as a lawyer."

Charging a lawyer for a 3.3 violation is narrow as the lawyer must make false statements to the courts, but Giuliani was also charged under 4.1 and 8.4 for making false statements to legislators and the public. Charging a lawyer for making statements to the public under 4.1 and 8.4 is concerning as another disciplinary authority sympathetic to former president Trump may charge a

lawyer for allegedly making false claims against Trump. One may argue that Giuliani was primarily charged in his capacity as a lawyer for Trump but the disciplinary rules are broad and allow a disciplinary authority to charge a lawyer even if the lawyer may not be acting in a representational capacity on behalf of a client.

Many lawyers tweeted that Trump was helped by the Russians to steal the 2016 elections and thus engaged in criminal conspiracy. The [Mueller report](#) found insufficient evidence that Trump's campaign "coordinated or conspired with the Russian government in its election-interference activities." However, the same report also found that Trump engaged in obstruction of justice, and so a lawyer accused of making false claims against Trump can find support in the Mueller report itself that the Russian government "interfered in the 2016 presidential election in sweeping and systematic fashion" and "violated U.S. criminal law". Even if a lawyer's tweet is perceived by a pro-Trump disciplinary authority as not being entirely true that Trump criminally conspired with Russia, there probably would not be a basis to charge lawyers under Rule 4.1 or 8.4 as they were not acting as lawyers for Clinton or her campaign. This lawyer may have a far stronger defense than Giuliani as the allegation that Trump was involved in a criminal conspiracy with Russian agents has not been entirely disproven.

Another interesting aspect of the NY court's opinion is that Giuliani also lied that "illegal aliens" voted in Arizona. Here too he did this in his capacity as a lawyer for a Trump, but another NY lawyer Aaron Schlosberg was publicly censured under 8.4(h) when he went on a racist rant against workers in a NY restaurant who spoke Spanish and not English, and he did not do this while representing a client.

<https://www.law.com/newyorklawjournal/2021/01/04/manhattan-attorney-who-se-racist-rant-went-viral-is-publicly-censured/?slreturn=20210524210958>. This part of the opinion brings vindication to immigration lawyers who have strenuously opposed Trump and his allies for scapegoating immigrants.

The bottom line is that the same broad First Amendment protections may not apply to lawyers who violate the disciplinary rules, especially when they knowingly make false statements in the course of representing a client or engage in conduct that adversely reflects on their fitness as a lawyer. While Rule 3.3 is more specific as a lawyer can only be accused of violating it if they lie in court, and Rule 4.1 is triggered when the lawyer lies to third parties in the

course of representing a client, a lawyer can be disciplined for just about any perceived violation under Rule 8.4 whether it is inside or outside the courtroom and even when it relates to conduct in a lawyer's private life.

So while we rejoice that Giuliani got his comeuppance for blatantly lying on behalf of Trump that the election was stolen from him, remember the old saying that what is good for the goose is also good for the gander.