

Hamilton P. Fox, III
Office of Disciplinary Counsel
Board of Professional Responsibility
District of Columbia Court of Appeals
515 5th Street NW
Building A, Suite 117
Washington, DC 20001

October 5, 2021

Dear Mr. Fox:

The undersigned attorneys file this ethics complaint against Jeffrey B. Clark, a member of the Bar of the District of Columbia, former Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice and former Acting Chief of the Department's Civil Division. We take this action because we believe, from publicly available information, that Mr. Clark violated the Rules of Professional Conduct when he sought to have the Department of Justice set in motion a process that would have nullified the 2020 Presidential election results in multiple states. Mr. Clark's actions were based on falsehoods with no factual support and were designed to advance his own personal and political interests at the expense of his client, the government of the United States.¹

This complaint is not about politics, political beliefs or political alliances. It is instead about law, in the form of ethical rules that govern the conduct of every lawyer who practices in the District of Columbia, from the solo practitioner to the Attorney General of the United States. There is substantial evidence that Mr. Clark violated those rules as he took deliberate steps that seriously risked electoral chaos and a constitutional crisis.

Comparable conduct concerning the 2020 election has triggered discipline for other lawyers who violated the ethical rules by making false statements designed to undermine public faith in the 2020 presidential election results. As a panel of the Appellate Division of the New York Supreme Court concluded in [Matter of Rudolph W. Giuliani](#):

The hallmark of our democracy is predicated on free and fair 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 a free society.

Slip Opinion at 31-32.

As we explain below, Mr. Clark made false statements about the integrity of the election in a concerted effort to disseminate an official statement of the United States Department of Justice that the election results in multiple states were unreliable. While his conduct mirrored that of other lawyers who have been sanctioned for false statements, they operated on a

¹ Whether Mr. Clark's client was the United States or the Department of Justice, a subdivision thereof, see [D.C. Bar Legal Ethics Committee Opinion No. 268](#) (2018), makes no difference to the claims we advance or the outcome we urge. Therefore, throughout the discussion that follows, we shall refer to the United States as Mr. Clark's client.

considerably more dangerous scale with commensurately greater risk to our democracy. Mr. Clark's activities require investigation and, if the publicly available information detailed below is accurate, serious sanctions.

I. The Conduct of Jeffrey Clark

The 2020 presidential election was held on November 3, 2020. Joseph R. Biden received slightly over 81 million popular votes and 306 electoral votes. His opponent, Donald J. Trump, received slightly over 74 million popular votes and 232 electoral votes. In all 50 states and the District of Columbia, those votes were [certified by December 9](#) and, [as required by law](#), the electors cast their votes on December 14.

At the time, Mr. Clark was serving as the Acting Head of the Civil Division of the Department of Justice, a position to which President Trump had appointed him the previous September. On December 28, two weeks after the electors cast their votes, Mr. Clark sent his superiors, Acting Attorney General Jeffrey Rosen and Acting Deputy Attorney General Richard Donoghue, [a letter he had drafted](#) and asked them to join him in signing it on behalf of the Department. The letter was addressed to Georgia Governor Brian Kemp, Georgia House Speaker David Ralston and Georgia Senate President *pro tempore* Butch Miller. The opening paragraph read:

The Department of Justice is investigating various irregularities in the 2020 election for President of the United States. The Department will update you as we are able on investigatory progress, but at this time we have identified significant concerns that may have impacted the outcome of the election in multiple States, including the State of Georgia. No doubt many of Georgia's state legislators are aware of irregularities, sworn to by a variety of witnesses, and we have taken notice of their complaints.

Those statements were false, for the Department had neither identified nor held any such concerns. Indeed, ten days after the election, the Department of Homeland Security's Cybersecurity & Infrastructure Security Agency had said that the election was the "[the most secure \[presidential election\] in American history](#)." And before Mr. Clark delivered his letter to Mr. Rosen and Mr. Donoghue, [dozens of courts](#) throughout the United States had considered and rejected claims of voter fraud brought on behalf of President Trump. Indeed, the Supreme Court of Georgia itself had rejected one of those challenges two weeks earlier.

Mr. Clark must have known the falsity of his statement that the Department "had significant concerns that may have impacted the outcome of the election". In mid-November, sixteen Assistant US Attorneys who had been assigned to monitor election results in fifteen different federal districts across the country publicly reported to Attorney General Barr that they had seen [no evidence of vote tabulation anomalies in the districts to which they had been assigned](#).

At the end of November, Attorney General Barr himself [told the Associated Press](#) that the Justice Department had uncovered no evidence of widespread voter fraud that could change the outcome of the 2020 election. Later, Barr used stronger language, [telling author Jonathan Karl](#) that "if there was evidence of fraud, I had no motive to suppress it. But my suspicion all the way along was that there was nothing there. It was all bullshit." Barr also dismissed allegations that voting machines across the country were rigged to switch votes from President Trump to Biden. "It's a

counting machine, and they save everything that was counted. So you just reconcile the two. There had been no discrepancy reported anywhere, and I'm still not aware of any discrepancy," Barr told Karl.

To be sure, in several states the vote had been close. Georgia was one of them. But, six weeks before Mr. Clark sent his letter to Mr. Rosen and Mr. Donoghue, the State had completed a [hand recount](#) of all votes cast in the State and Georgia's Secretary of State Brad Raffensperger had [affirmed](#) that the original results were correct. Later, on December 7, Raffensperger reaffirmed that certification after Georgia completed a [second hand-recount](#).

Notwithstanding the falsity of his proposed letter's statements, Mr. Clark proposed that the Department of Justice recommend a predictably destructive course of action. "In light of these developments," his proposed letter read:

[T]he Department recommends that the Georgia General Assembly should convene in special session so that its legislators are in a position to take additional testimony, receive new evidence, and deliberate on the matter consistent with its duties under the U. S. Constitution. Time is of the essence, as the U. S. Constitution tasks Congress with convening in joint session to count Electoral College certificates, see U. S. Const., art. II, §1, cl. 3, consider objections to any of those certificates, and decide between any competing slates of electoral certificates, and 3 U. S. C. §15 provides that the session shall begin on January 6, 2021 with the Vice Pres. presiding over the session as President of the Senate.

. . .

The Department also finds troubling the current posture of a pending lawsuit in Fulton County, Georgia, raising several of the voting irregularities pertaining to which candidate for President of the United States received the most lawfully cast votes in Georgia. . . . Despite the action having been filed on December 4, 2020, the trial court there has not even scheduled a hearing on [the] matter, making it difficult for the judicial process to consider this evidence and resolve these matters on appeal prior to January 6. Given the urgency of this serious matter including the Fulton County litigation's sluggish pace, the Department believes that a special session of the Georgia General Assembly is warranted and is in the national interest.

Mr. Clark's proposed letter concluded with the suggestion that, if Governor Kemp did not call the legislature into session, "the Georgia General Assembly has implied authority under the Constitution of the United States to *call itself into special session* for the limited purpose of considering issues pertaining to the appointment of Presidential Electors." (Emphasis in original)

It is true that, in spite of the hand recounts, the certifications and the Georgia Supreme Court decision, a Georgia legislative committee had raised some concerns about the Georgia election.²

² Mr. Clark's [proposed letter](#) referred to a report issued by Georgia Sen. William Ligon, who chaired the Election Law Study Subcommittee of the Georgia Standing Senate Judiciary Committee, which stated that: "The November 3, 2020 General Election . . . was chaotic and any reported results must be viewed as untrustworthy." Neither the Georgia legislature nor any Georgia officials took any action to alter the outcome of the twice hand-counted Georgia vote on the basis of the report.

But the letter Mr. Clark proposed was not Georgia-specific. Instead, it was a template for Department of Justice exhortations to multiple states without any support for any claim that anything untoward had occurred in any of them. He made that clear in the email he used to deliver his proposal to Rosen and Donoghue. As Mr. Clark explained,

[t]he concept is to send [the attached letter] to the Governor, Speaker, and President pro temp of each relevant state to indicate that in light of time urgency and sworn evidence of election irregularities presented to courts and to legislative committees, the legislatures thereof should each assemble and make a decision about electoral appointment in light of their deliberations.

Thus, on the basis of false statements about non-existent Justice Department concerns, Mr. Clark was proposing that the Department recommend and deploy a stratagem with enormous destabilizing potential for the entire nation.

Mr. Donoghue [responded promptly](#), saying, among other things:

[T]here is no chance that I would sign this letter or anything remotely like this. While it may be true that the Department "is investigating various irregularities in the 2020 election for President" (something we typically would not say publicly), investigations I am aware of relate to suspicions of misconduct that are such a small scale that they simply would not impact the outcome of the Presidential Election. AG Barr made that clear to the public only last week, and I am not aware of intervening developments that would change that conclusion. Thus, I know of nothing that would support the statement, 'we have identified significant concerns that may have impacted the outcome of the election in multiple states.' . . . More important, I do not think the Department's role should include making recommendations to State legislatures about how they should meet their Constitutional obligation to appoint Electors.³

Neither Mr. Rosen nor Mr. Donoghue signed Mr. Clark's proposed letter, and it was never issued.

Mr. Clark's proposal, however, did not occur in a vacuum. On December 14, Attorney General Barr had announced that he would resign effective December 23. President Trump appointed Mr. Rosen, then the Deputy Attorney General, as Acting Attorney General and Mr. Donoghue to replace Mr. Rosen as acting Deputy Attorney General.

When he made those appointments, President Trump himself was fully engaged in efforts to have the Department of Justice pursue various claims of election fraud despite the absence of any evidence that widespread fraud had occurred. As part of that effort, the President had asked Mr. Rosen to file briefs on behalf of the Department of Justice in several pending lawsuits challenging unfavorable results. Mr. Rosen had [declined](#), saying that the Department had investigated and had found no evidence of widespread voter fraud. In a meeting on December 27, per Mr. [Donoghue's](#) notes, Mr. Rosen told the President that the Department "can't + won't snap its fingers and change the outcome of the election." The President responded by saying "just say the election was corrupt + leave the rest to me and the R. Congressmen."

³ Mr. Donoghue's emails can be viewed following the proposed letter [here](#).

But in Mr. Clark, who had been meeting with him in violation of applicable [Department of Justice](#),⁴ the President had found an ally. In late December, Mr. Clark [told](#) Mr. Rosen and Mr. Donoghue that he wanted the Department to hold a news conference announcing that it was investigating serious accusations of election fraud. Mr. Rosen rejected the proposal. Mr. Rosen and Mr. Donoghue also [rebuked](#) Mr. Clark for meeting with the President without their knowledge or authorization. Mr. Clark did meet with the President in early January, though it appears he advised Mr. Rosen that he was doing so. It also appears that at least one item on the agenda was Mr. Clark's own replacement of Mr. Rosen at the top of the Department of Justice.

On Sunday, January 3, Mr. Clark [informed](#) Mr. Rosen that the President intended to name him (Mr. Clark) as the Acting Attorney General and that Mr. Rosen could stay on as his deputy if he chose to do so. That stunning announcement produced a meeting that evening with the President, Mr. Clark, Mr. Rosen and White House counsel Pat A. Cipollone, in which meeting Mr. Clark and Mr. Rosen [reportedly](#) each made his own case as to why he should occupy the position of Acting Attorney General. During the course of the meeting, the President reportedly said that "people tell me Jeff Clark is great, I should put him in. People want me to replace DOJ leadership." But the President also learned from Mr. Cipollone and others that replacing Mr. Rosen with Mr. Clark would [lead](#) to mass resignations at the highest level of the Department of Justice, and the President ultimately declined to do so.⁵

II. The Ethical Violations That We Allege Mr. Clark Committed

1. Mr. Clark Violated Rule 8.4(c)

A. [Rule 8.4\(c\) – Relevant Text](#)

It is professional misconduct for a lawyer to . . . (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

B. [Rule 8.4\(c\)'s Legal Standards](#)

Under Rule 8.4(c),

"[D]ishonesty" . . . encompasses fraudulent, deceitful, or misrepresentative behavior. In addition to these, however, it encompasses "a lack of probity . . .

⁴ For a history of DOJ and White House policies on communications with the Department of Justice, see <https://protectdemocracy.org/protecting-independent-law-enforcement/a-bipartisan-norm/> and <https://www.lawfareblog.com/white-house-interference-justice-department-investigations-2009-holder-memo>. See also <https://thenevadaindependent.com/article/doj-tells-cortez-masto-that-obama-era-policy-to-minimize-white-house-contact-is-still-in-place>

⁵ The DOJ Office of the Inspector General has announced an "investigation into whether any former or current DOJ official engaged in an improper attempt to have DOJ seek to alter the outcome of the 2020 Presidential Election." <https://oig.justice.gov/sites/default/files/2021-01/2021-01-25.pdf>. In the event the OIG determines there was improper conduct by any such official, the OIG is authorized to make referrals to the DOJ Office of Professional Responsibility. <https://www.justice.gov/opr/jurisdiction-and-relationship-office-inspector-general.end>. Whatever the results of the OIG investigation, it is essential to the integrity of our self-governing profession that the ODC fulfill its independent obligation to address serious misconduct by a member of the Bar.

integrity . . . fairness and straightforwardness”; statements that are “technically true” but fail to state the whole truth qualify as “conduct . . . of a dishonest character.”

Matter of Shorter, 570 A.2d 760, 768 (DC 1990). As the District of Columbia Court of Appeals recently explained:

The concepts of dishonesty, fraud, and misrepresentation each have a distinct meaning, though they overlap in certain respects. Dishonesty is the most general of the violations. It includes “not only fraudulent, deceitful or misrepresentative conduct, but also ‘conduct evincing a lack of honesty, probity or integrity in principle; a lack of fairness and straightforwardness.’” *In re Samad*, 51 A.3d 486, 496 (D.C. 2012) (quoting *Matter of Shorter*, 570 A.2d 760, 767–68 (D.C. 1990)). Fraud and misrepresentation are more specific and require “active deception or positive falsehood.” *Matter of Shorter*, 570 A.2d at 768. Fraud “embraces all the multifarious means . . . resorted to by one individual to gain advantage over another by false suggestions or by suppression of the truth,” *In re Austin*, 858 A.2d 969, 976 (D.C. 2004) (quoting *Shorter*, 570 A.2d at 767 n.12), and, unlike dishonesty, requires a showing of intent to defraud or deceive. *In re Romansky*, 825 A.2d 311, 315 (D.C. 2003). Misrepresentation, finally, is an untrue or incorrect representation, statement, or account. *Matter of Shorter*, 570 A.2d at 767 n.12. *In re Ekekwe-Kauffman*, 210 A.3d 775, 795–96 (D.C. 2019).

See also *In re Ukwu*, 926 A.2d 1106, 1113-14 (“Rule 8.4(c) is not to be accorded a hyper-technical or unduly restrictive construction”).

Equally important, recklessly false misrepresentations violate the rule no less than those made knowingly and intentionally. See, *In re Boykins*, 999 A.2d 166, 172 (D.C. 2010) (“[w]e have given a broad interpretation to Rule 8.4(c)” and . . . “sufficiently reckless conduct is enough to sustain a violation of the rule”), quoting, *In re Hager*, 812 A.2d 904, 916 (D.C.2002); *In re Tun*, 195 A.3d 65, 72, n. 10 (D.C. 2018) (“respondent violated Rule 8.4 (c) in that the recusal motion ‘contained a misrepresentation that was made recklessly.’”; *In re Brown*, 112 A.3d 913, 918 (D.C. 2015), reinstatement granted, 228 A.3d 141 (D.C. 2020) (“record amply supports the conclusions that Ms. Brown . . . made false statements with reckless disregard for the truth.”).

These principles apply with special force to government officials and prosecutors who owe a higher duty to the public than ordinary lawyers, government officials having been entrusted with authority granted by the people. *People v. Larsen*, 808 P.2d 1265, 1267 (Colo. 1991). As the Court stated in *Lawyer Disciplinary Bd. v. Clifton*, 236 W.Va. 362, 378 (W. Va. 2015):

Ethical violations by a lawyer holding a public office are viewed as more egregious because of the betrayal of the public trust attached to the office.

See also *Plaquemines Par. Com’n Council v. Delta Dev.*, 502 So. 2d 1034, 1039-40 (La. 1987):

Public officials occupy positions of public trust The duty imposed on a fiduciary embraces the obligation to render a full and fair disclosure to the beneficiary of all facts which materially affect his rights and interests.

Accord, ABA Model [Rule 8.4\(c\), Comment 7](#): “Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer’s abuse of public office can suggest an inability to fulfill the professional role of lawyers.”

C. Application of Rule 8.4(c)’s Legal Standards to Mr. Clark’s Misconduct

As set forth above, the publicly available facts demonstrate that Mr. Clark violated Rule 8.4(c) knowingly or, at the very least, recklessly. To reiterate, Mr. Clark’s proposed December 28 letter said that the Department of Justice had “identified significant concerns that may have impacted the outcome of the election in multiple States, including the State of Georgia.” That statement was false. The Department of Justice had identified no such concerns and moreover none existed. On the contrary, before Mr. Clark delivered his letter to Mr. Rosen and Mr. Donoghue, the Department of Homeland Security had announced on November 13 that “the November 3rd election was the most secure in American history.” The State of Georgia had confirmed the Georgia election results after [two hand recounts](#). Courts across the nation had rejected [dozens of lawsuits](#) brought by the Trump campaign containing claims of voter fraud and the Georgia Supreme Court itself had [dismissed](#) one of those suits on December 13.

Perhaps most important, leadership of the Department of Justice itself had publicly contradicted Mr. Clark’s assertion before he made it. On November 13, 16 assistant U. S. Attorneys who had been assigned to monitor malfeasance in the 2020 election in 15 different federal districts reported to Attorney General Barr that they had seen no evidence of any substantial anomalies in the election processes. Attorney General Barr publicly confirmed those findings on November 30, stating that the Department “had uncovered no evidence of widespread voter fraud that could change the outcome of the 2020 election.” And, as General Barr later told author Jonathan Karl, “If there was evidence of fraud, I had no motive to suppress it. But my suspicion all the way along was that there was nothing there. It was all bullshit. . . .”

It is inconceivable that Mr. Clark was unaware of those facts when he made his proposal to Mr. Rosen and Mr. Donoghue. But even if the facts had somehow escaped him, his proposal recklessly violated Rule 8.4(c). There was nothing to which he pointed or, from all of the extensive material now in the public record, to which he could have pointed, to support his assertion that the Department of Justice had “identified significant concerns that may have impacted the outcome of the election in multiple States.” And yet he made that representation to his superiors and sought to induce them to advance it.⁶ Mr. Donoghue’s reply confirmed the absence of any affirmative basis for Mr. Clark’s statement, reiterating what General Barr had said publicly the previous week, “While it may be true that the Department ‘is investigating various irregularities in the 2020 election for President’ . . . investigations I am aware of relate to suspicions of misconduct that are such a small scale that they simply would not impact the outcome of the Presidential Election. . . . I know of nothing that would support the statement, ‘we have identified significant concerns that may have impacted the outcome of the election in multiple states.’”

That his superiors prevented the letter from being sent does not diminish the gravity of Mr. Clark’s misconduct. Rule 8.4(a) provides that: “It is professional misconduct for a lawyer to (a)

⁶ True, there was Georgia Senator Ligon’s report, see n. 3, *supra*, but nothing had come of that in Georgia, and that report had no implications for “each relevant state” to which Mr. Clark proposed that the Department send the letter.

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.” (Emphasis added). Unquestionably, Mr. Clark attempted to violate Rule 8.4(c) and to induce Mr. Rosen and Mr. Donoghue to join him in doing so.⁷

In sum and from all that appears on the public record, Mr. Clark presented a dishonest and reckless proposal to Mr. Rosen and Mr. Donoghue, thereby violating Rule 8.4(c) and should be investigated and sanctioned for doing so.

2. Mr. Clark Violated Rule 8.4(d)

A. Rule 8.4(d) – Relevant Text

Rule 8.4(d) provides in relevant part:

It is professional misconduct for a lawyer to: . . . (d) [e]ngage in conduct that seriously interferes with the administration of justice.

B. Rule 8.4(d) Legal Principles

Rule 8.4(d) is read broadly to “uphold the integrity and competence of the legal profession.” *See In re Hopkins*, [677 A.2d 55](#), 59 (DC 1996). The rule “encompass[es] derelictions of attorney conduct considered reprehensible to the practice of law.” *In re Alexander*, [496 A.2d 244](#), 255 (D.C. 1985).

In *Hopkins*, the Court outlined the elements of a violation of Rule 8.4(d) in the following fashion: “First, of course, the conduct must be improper. . . . Second, as explained in *Shorter*, the conduct itself must bear directly upon the judicial process (i.e., the “administration of justice”) with respect to an identifiable case or tribunal. . . . And third, the attorney’s conduct must taint the judicial process in more than a *de minimis* way; that is, at least potentially impact upon the process to a serious and adverse degree.” *In re Hopkins*, *supra* at 60-61. Accord, *In re White*, 11 A.3d 1226, 1230 (D.C. 2011); *In re Okwu*, 926 A.2d 1106, 1143 (D.C. 2007).

When the Court decided *In re Mason*, 736 A.2d 1019 (D.C. 1999) three years later, though, it made clear that its comments in *Hopkins* did not describe the entire scope of Rule 8.4(d)’s prohibitions (as the Court considered the Rule’s predecessor, DR 1-102(A)(5)).⁸ Explaining, the Court said:

Our case law supports a somewhat expansive view of DR 1-102(A)(5). As we stated in [In re Alexander](#), 496 A.2d 244 (D.C. 1985), DR 1-102(A)(5) “is a general rule that is purposely broad to encompass derelictions of attorney conduct considered

⁷ It is worth noting that Mr. Clark attempted to induce Mr. Rosen and Mr. Donoghue to participate in making false statements to the public, which gives rise to a separate violation of Rule 4.1(a) prohibiting a “false statement of material fact . . . to a third party.”

⁸ “Paragraph (d)’s prohibition of conduct that ‘seriously interferes with the administration of justice’ includes conduct proscribed by the previous Code of Professional Responsibility under DR 1-102(A)(5) as ‘prejudicial to the administration of justice.’” DR 8.4(d), Comment [2].

reprehensible to the practice of law." *Id.* at 255 (citing the Board's adopted Appendix). We have also endorsed the notion that "conduct that is prejudicial to the administration of justice" can be equated to "conduct unbecoming a member of the bar." [5] *In re Solerwitz*, 575 A.2d 287, 292 (D.C.1990) (*per curiam*) (citing the Board's adopted Appendix). This broad reading is supported by the aim of DR 1-102 set forth in the Code of Professional Responsibility, which is to uphold the "integrity and competence of the legal profession." *See In re Hopkins*, 677 A.2d 55, 59 (D.C.1996) (citing Canon 1 of the Code of Professional Responsibility). A DR 1-102(A)(5) violation does not require that a specific court procedure be violated, nor does it require that a judicial body make an incorrect decision. *Id.* at 59-60. Such a violation also does not have to be affiliated specifically with the judicial decision-making process; the conduct simply must bear upon the administration of justice. *Id.* at 60-61.

Id. at 1022-23.

Mason dealt with false statements that a lawyer made to an administrative agency. But in its opinion, the Court noted other instances in which it had:

upheld DR 1-102(A)(5) violations in cases that do not involve a formal court setting. In the case of *In re Hutchinson*, 534 A.2d 919 (D.C. 1987) (*en banc*), we found a DR 1-102(A)(5) violation where respondent testified, under oath, untruthfully before the Securities and Exchange Commission regarding a personal investment. *Id.* at 919-20. In the case of *In re Keiler*, *supra*, 380 A.2d at 119, we held that respondent violated DR 1-102(A)(5) by selecting an interested party to serve as (what others assumed to be) a disinterested arbitrator in a private arbitration matter. We noted in *Keiler* that "harm results to the administration of justice when the conduct of a judicial or quasi-judicial proceeding is such as to render that proceeding a bogus one." *Id.* at 123 (emphasis added).

Id. at 1024.

In sum, the reach of Rule 8.4(d) is broad, for there are no precise boundaries to the concept of "the administration of justice" as that term is used in the Rule. Instead,

[a]s the D.C. Circuit has observed, we have found quasi-judicial proceedings where a proceeding has "all of the trappings of an adjudicatory tribunal," or where a proceeding "is designed to adjust the rights or liabilities of the parties before it and calls for an exercise of guided discretion by an impartial decisionmaker." But that is merely descriptive of tribunals we have found to be "quasi-judicial"; there is no fixed standard for quasi-judicial, nor is there a telltale sign for one . . .

Park v. Brahmhatt, 234 A.3d 1212, 1217 (D.C. 2020)(footnotes omitted).

C. Application of Rule 8.4(d)'s Legal Principles to Mr. Clark's Misconduct

The principles just outlined show that Mr. Clark's attempt to have the Department of Justice issue the letter he proposed violated Rule 8.4(d). First of all, at the time he sought to enlist

Messrs. Rosen's and Donoghue's support for his plan, a lawsuit involving alleged election irregularities was pending in the Fulton County Superior Court. Indeed, Mr. Clark's letter specifically referenced that lawsuit and, because of the allegedly sluggish pace at which Mr. Clark claimed it was proceeding, sought an end-run around it through unprecedented legislative action. Whether or not Georgia officials heeded a call to convene the Legislature, the letter alone surely would have generated enormous publicity that could have substantially affected the case as it proceeded. Either way, Mr. Clark's proposed action had the potential for a serious adverse impact on the administration of justice in the pending case.

Wholly apart from the Fulton County case, Mr. Clark's plan was an attempt to interfere seriously with the administration of justice on a much broader scale. The process of certifying the Georgia Presidential election results – indeed, the process of certifying election results in every state – is essentially a quasi-judicial process in the same sense that the administrative proceedings discussed in *Mason* had quasi-judicial elements. The certification process involves gathering the votes, counting them at the local level, resolving disputes regarding ballots, poll access or other asserted irregularities through administrative or judicial processes, and then sending local results to the office of the Secretary of State where, if necessary, additional challenges can be resolved. In this case, as noted earlier, part of that process resulted in two hand recounts of the five million ballots that had been cast throughout the State of Georgia. Only after all of those processes had been completed did Secretary of State Raffensperger [certify the results](#) as [accurate](#), thereby determining the electors the citizens of Georgia had chosen to cast ballots for the next President of the United States.

Notwithstanding that careful and thorough administrative process to verify the will of Georgia voters, Mr. Clark's proposed letter was an official request by the Department of Justice of the United States for the Georgia Legislature to call itself into session and substitute its own presidential electors for those chosen by Georgia citizens. It was based on fabricated and fictional concerns. Even worse, Mr. Clark proposed to Messrs. Rosen and Donoghue that the Department of Justice send a similar letter to other unnamed states without any evidence, so far as appears in the public record, that the certifications resulting from similar administrative processes in those states were unreliable.

It is difficult to think of graver, more disruptive or more consequential interference with the administration of justice than what Mr. Clark was proposing. Simply to state his proposal is to comprehend the disruptive chaos such a letter would produce as it either shredded public confidence in carefully examined, tested and certified election results or shook confidence in the fairness and impartiality of the Department of Justice itself. That result would have adversely impacted its ability to deal with future election practices that truly presented serious and widespread irregularity. Mr. Clark attempted in an unprecedented way to “engage in conduct that seriously interferes with the administration of justice.” He should be sanctioned for that effort.

III. Request for Relief

Given the foregoing facts and circumstances, we respectfully request that the ODC:

- (i) docket this complaint in accordance with Board on Professional Responsibility (“BPR”) Rule 2.3;

- (ii) advise the complainants as required by BPR 2.6 that ODC has received and docketed the complaint; and
- (iii) confirm that the complaint will be investigated by ODC in accordance with Rule XI, as it is required to do with all credible complaints of attorney misconduct.

We understand that your policy is not to docket complaints where the complainant lacks personal knowledge of the underlying facts, and that BPR reportedly agrees with your policy and is taking steps to amend its rules to conform with the policy. Until any such amendment is adopted, however, your clear obligation is to comply with the controlling requirement that the complaint be docketed in the same manner as any other credible complaint submitted to your office and the complainants in the same manner notified.

In addition, we request that ODC expedite the initiation of formal, public disciplinary proceedings under Section 8(c) of Rule XI against Mr. Clark. The available public record is more than sufficient to justify an expedited petition and the appointment of a hearing committee. Moreover, there is a strong public interest in a transparent, public process in this matter in light of the gravity and intended impact of Mr. Clark's misconduct. The underlying premise of Mr. Clark's misconduct is the falsehood that the presidential election results were fraudulent -- what many have referred to as the Big Lie. This falsehood strikes at the core of our constitutional democracy by undermining the essential public faith in our elections, and as many have noted, it is a [familiar tactic of authoritarian leaders](#) and movements. It is particularly important in these circumstances, therefore, that ODC provide members of the bar and the public with a high level of confidence that ODC recognizes the seriousness of this matter, and that it is acting promptly to address it within the confines of the applicable rules. A prompt petition under Rule 8(c) would serve that purpose, assuming that ODC accepts the proffered evidence and analysis set forth in this complaint.⁹

Finally, in considering this complaint and the requested relief, we urge that the misconduct by Mr. Clark be evaluated in context with that of other lawyers who were proponents of the falsehood that the 2020 election was stolen through fraud. As the ODC is undoubtedly aware, courts and disciplinary authorities in other jurisdictions are in the process of addressing related misconduct with the utmost seriousness and transparency. Thus far, these proceedings have resulted in an [interim suspension](#) for Rudy Giuliani in New York (with [reciprocal suspension](#) here in D.C.), [judicial sanctions](#) under Fed. R. Civ. P. Rule 11 and [referrals for bar discipline](#) for Sidney Powell and other lawyers in federal district court in Michigan, and similar [sanctions](#) in Colorado for two lawyers who commenced a baseless purported class action concerning the 2020 election. These disciplinary actions each focused on the propagation by lawyers of the falsehood that the 2020 election results were affected by systemic fraud as well as the threat such efforts pose to our constitutional democracy and the rule of law. We urge the ODC to address the conduct of Mr. Clark with the same seriousness, dispatch, and transparency exhibited by these other tribunals.

⁹ We note that the State Bar of Texas Chief Disciplinary Counsel (CDC) is considering a complaint filed in July 2021 by Lawyers Defending American Democracy (LDAD) and other signers against Attorney General Kenneth Paxton. The CDC has already announced that the complaint alleges claims of misconduct and that Mr. Paxton must respond to the claims. See the CDC's [letter of August 24, 2021](#) to Gershon Ratner of LDAD.

Respectfully submitted,

*All signer titles for identification purposes only

Donald Ayer
Adjunct Professor, Georgetown Law School
Advisory Board Member, States United Democracy Center
U.S Attorney (E.D.Cal) (1982-86)
Principal Deputy Solicitor General (1986-88)
Deputy Attorney General (1989-90)

Frederick D. Baron
Associate Deputy Attorney General and Director,
Executive Officer for National Security (1995-96)
Assistant U.S. Attorney, District of Columbia (1980-82)
Special Assistant to the Attorney General (1977-79)

Dori Bernstein
Retired Director, Supreme Court Institute, Georgetown University Law Center
Former appellate attorney, Office of General Counsel, U.S. Equal Employment Opportunity
Commission

Charles R. Both
Law Offices of Charles R. Both

John C. Brittain
Olie W. Rauh Professor of Law,
University of District Columbia David A. Clarke School of Law

Katherine S. Broderick
Dean Emerita and Joseph L. Rauh, Jr. Chair of Social Justice
University of District Columbia David A. Clarke School of Law

Susan Carle
Professor of Ethics Law and Vice-Dean,
American University,
Editor of *Lawyers' Ethics and the Pursuit of Social Justice* (NYU Press 2005)

Erwin Chemerinsky
Dean and Jesse H. Choper Distinguished Professor of Law,
University of California, Berkeley School of Law

Angela J. Davis
Distinguished Professor of Law,
Criminal Justice Ethics and Criminal Law and Procedure,
American University,
Author of *Arbitrary Justice: The Power of the American Prosecutor* (Oxford University Press,
2007)

Daniel B. Edelman
Senior Counsel, Katz Marshall & Banks LLP

Ambassador Norman Eisen (ret.)
White House Ethics Czar 2009-11
Chair, States United Democracy Center

Nicholas Fels,
Former Partner, (retired) Covington & Burling
Lawyers Defending American Democracy Steering Committee

Eugene Fidell
Adjunct Professor of Law, NYU School of Law

Deborah S. Froling
President, National Association of Women Lawyers, 2013-2014

Stuart M. Gerson
Acting Attorney General of the United States (1993)
Assistant Attorney General for the Civil Division (1989-93)
Assistant United States Attorney for the District of Columbia (1972-75).

Stephen F Hanlon
Former Pro Bono Partner, Holland & Knight (ret.)

Richard B. Herzog
Senior Counsel, Harkins Cunningham LLP
Former Deputy Director for Policy, Economic Regulatory Administration, Department of Energy
Former Assistant Director for National Advertising, Bureau of Consumer Protection, Federal
Trade Commission

Debra S. Katz
Partner, Katz Marshall & Banks LLP

Bruce Kuhlik
Former Partner, Covington & Burling
Former Assistant to the Solicitor General, US Department of Justice

Simon Lazarus
Former Associate Director, White House Domestic Policy Staff (1977-81)
Former Senior Counsel, Constitutional Accountability Center

Eric L. Lewis
Senior partner,
Lewis Baach Kaufmann Middlemiss pllc

Stanley J. Marcuss
Retired Partner, Bryan Cave Leighton Paisner
Lawyers Defending American Democracy Steering Committee

Lorelie S. Masters
Former President, Women's Bar Association of the District of Columbia.

Elliott S. Milstein
Emeritus Professor of Law
Former Dean
American University Washington College of Law

Gershon (Gary) Ratner
Co-Founder, Lawyers Defending American Democracy
Former HUD Associate General Counsel for Litigation

Louise Renne
Co-chair, Coalition to Preserve, Protect & Defend
Former City Attorney of San Francisco (1986-2001)

Joseph Rich
Attorney, Department of Justice, 1968-2005

William L. Robinson
Founding Dean and Emeritus Distinguished Professor of Law,
University of District Columbia David A. Clarke School of Law
Former Associate General Counsel for Litigation, U.S. Equal Employment Opportunity
Commission

Estelle H. Rogers
Former Member, ABA House of Delegates
Lawyers Defending American Democracy Steering Committee

Stephen A. Saltzburg
Wallace and Beverley Woodbury University Professor of Law,
George Washington University,
Former Deputy Assistant Attorney General, Criminal Division

Abbe Smith
Professor of Law, Georgetown University Law Center
Author of Understanding Lawyers' Ethics (with Monroe H. Freedman) (5th Ed., Carolina Press
2016) and Editor of Lawyers' Ethics (with Freedman & Woolley) (Routledge, 2016)

Melvin White
Former DC Bar President,
Member/Barrister - Edward Bennett Williams Inn of Court, 1991-2018
Attorney in private practice

cc: Delivery by overnight mail

Michael E. Horowitz, Inspector General
U.S. Department of Justice
Office of the Inspector General
950 Pennsylvania Avenue NW
Washington, D.C. 20530-0001

Jeffrey R. Ragsdale, Director and Chief Counsel
Office of Professional Responsibility
U.S. Department of Justice
950 Pennsylvania Avenue, N.W., Suite 3266
Washington, DC 20530-0001