
**LAWYERS
DEFENDING
AMERICAN
DEMOCRACY**

October 30, 2023

Attorney Grievance Committee
Supreme Court of the State of New York
Appellate Division, Third Judicial Department
286 Washington Avenue Extension, Suite 200
Albany, NY 12203
Email: [REDACTED]

Re: Professional Responsibility Investigation of Kenneth John Chesebro
Registration No. 4497913

Dear Grievance Committee Members:

Lawyers Defending American Democracy (“LDAD”) is a non-profit, non-partisan organization, the purpose of which is to foster adherence to the rule of law. On October 12, 2022, LDAD filed an ethics complaint against Kenneth J. Chesebro because he violated multiple rules of the New York Rules of Professional Conduct (22 NYCRR Part 1200) (RPC) while representing former President Donald Trump and the Trump Campaign. The complaint was filed with the First Department, but subsequently transferred to your Department, where Mr. Chesebro was first admitted to practice, in light of his reported relocation from Manhattan to San Juan, Puerto Rico.

On August 28 of this year, we wrote to explain the ways in which Mr. Chesebro’s ethical violations were further revealed in three recent documents: (i) the indictment of former president Donald Trump filed in federal court in Washington, D.C. on August 1,¹ (ii) the indictment of Mr. Chesebro, along with the former president and seventeen other individuals filed in Fulton County, Georgia on August 14,² and (iii) an August 8 blog post by Harvard Law School professor Laurence H. Tribe.³

As you are very likely aware, on October 20, Mr. Chesebro entered a guilty plea in Fulton County Superior Court to a count of conspiracy to file a false document.⁴ We write now to

¹ *United States v. Trump*, No. 1:23-cr-00257-TSC (D.D.C. filed Aug. 1, 2023), available at https://www.justice.gov/storage/US_v_Tump_23_cr_257.pdf.

² *State of Georgia v. Trump*, No. 23SC1888947 (Fulton Super. Ct. filed Aug. 14, 2023), available at <https://d3i6fh83elv35t.cloudfront.net/static/2023/08/CRIMINAL-INDICTMENT-Trump-Fulton-County-GA.pdf>.

³ Laurence H. Tribe, “Anatomy of a Fraud: Kenneth Chesebro’s Misrepresentation of My Scholarship in His Efforts to Overturn the 2020 Presidential Election” (Aug. 8, 2023), available at <https://www.justsecurity.org/87498/kenneth-chesebros-misrepresentation-of-laurence-tribe-scholarship-in-his-efforts-to-overturn-the-2020-presidential-election/>.

⁴ See “Chesebro’s Plea Deal Could Undermine a Possible Trump Defense in Two Cases,” NEW YORK TIMES (Oct. 20, 2023), available at <https://www.nytimes.com/2023/10/20/us/politics/chesebro-plea-deal-georgia-trump.html?searchResultPosition=2>.

review the consequences of that plea under New York law and to describe how that plea further establishes Mr. Chesebro's ethical violations. As explained below, while his lawyer may "expect[] him to keep" his law license,⁵ Mr. Chesebro's plea instead strongly supports his disbarment.

The gravamen of Mr. Chesebro's Georgia indictment is that he was the originator, and the mastermind, of the "fake elector" scheme, in which groups of Trump electors in six states met in December 2020, cast ballots for Mr. Trump, and then falsely certified to Congress that their votes represented the "real" presidential election results for those states. Mr. Chesebro acknowledged that this scheme was illegal under the Electoral Count Act, and that its true purpose was to generate "a huge political crisis" that would somehow result in someone besides Joseph Biden becoming president.⁶

While the indictment charged Mr. Chesebro with six counts of violating four statutes, he was allowed to plead guilty to a single count of conspiracy⁷ to knowingly file a false document in a public record.⁸ Both the underlying offense and the conspiracy are felonies under Georgia law.⁹ The underlying offense would appear to be a felony under New York law as well.¹⁰ It seems, however, that a conspiracy to commit that offense in New York would be a Class A misdemeanor, not a felony.¹¹ Nonetheless, Mr. Chesebro's plea has important, adverse consequences for him under § 90(4) of the New York Judiciary Law and Rule 1240.12 of this Court's Rules for Attorney Disciplinary Matters:

- The offense to which Mr. Chesebro pled guilty is still a "serious crime," because it is a felony under the law of another state;¹²
- Mr. Chesebro has 30 days from October 20 to provide the Appellate Division with a copy of his plea;¹³
- His law license will be automatically suspended upon the Court's receipt of his plea agreement;¹⁴ and
- The Court will issue an order to Mr. Chesebro asking him to show cause why he should not be suspended, censured or disbarred.¹⁵

Mr. Chesebro's guilty plea provides an even greater basis than already existed for him to be disbarred. He has now admitted squarely that he conspired to file a false election certificate – i.e.,

⁵ "Kenneth Chesebro, a Trump-Aligned Lawyer, Pleads Guilty in Georgia," NEW YORK TIMES (Oct. 20, 2023), available at <https://www.nytimes.com/2023/10/20/us/kenneth-chesebro-trump-guilty-plea-georgia.html?searchResultPosition=1>.

⁶ Email from Kenneth Chesebro to Rudolph Giuliani re "Brief Notes on 'President of the Senate' Strategy" (Dec. 13, 2020), available at <https://www.justsecurity.org/wp-content/uploads/2022/06/january-6-clearinghouse-kenneth-chesebro-email-to-rudy-giuliani-december-13-2020.pdf>.

⁷ Georgia Code § 16-4-8.

⁸ *Id.* § 16-10-20.1(b)(1).

⁹ *See id.* §§ 16-4-8, 16-10-20.1(c).

¹⁰ *See* New York Penal Law § 175.35(1), "Offering a false instrument for filing in the first degree."

¹¹ The underlying offense in this case is a Class E felony under New York law, *see id.*, and a conspiracy to commit a Class E felony (a conspiracy in the fifth degree) is a Class A misdemeanor. *See id.* art. 105, esp. § 105.05.

¹² *See* New York Judiciary Law § 90(4)(d).

¹³ *Id.* § 90(4)(c); Rule 1240.12(a).

¹⁴ New York Judiciary Law § 90(4)(f).

¹⁵ *Id.* § 90(4)(g); Rule 1240.12(c)(2).

that he “engage[d] in conduct involving dishonesty, fraud, deceit or misrepresentation,” in violation of RPC Rule 8.4(c).

Chesebro’s case is on all fours with *Matter of Rogan*, in which the Appellate Division disbarred a lawyer for faking a judge’s initials on an order that she sought to file.¹⁶ The Court found that the lawyer’s conduct established the elements of forgery in the first degree, a felony (even though the lawyer had pled guilty to a misdemeanor), and that this “serious criminal conduct or misrepresentation” violated Rule 8.4(c) and warranted disbarment. *See also Matter of Toback* (falsely notarized agreement, falsely executed litigation certificate and false deposition testimony justified disbarment under Rule 8.4(c)).¹⁷

Of course, the false submissions that Mr. Chesebro conspired to have filed involved a matter of vastly greater importance: the election of the President of the United States. His conduct literally affected every person in the United States. It is hard to imagine a more momentous falsification, or one more deserving of disbarment.

Mr. Chesebro’s plea also represents his admission to having “engage[d] in illegal conduct that adversely reflects on [his] honesty, trustworthiness or fitness as a lawyer,” in violation of RPC Rule 8.4(b). Both *Matter of Rogan* and *Matter of Toback* held that the lawyers in those cases violated Rule 8.4(b), as well as Rule 8.4(c). For the same reasons, Mr. Chesebro’s far more consequential conduct also justifies disbarment under RPC Rule 8.4(b).

Many other rules of professional conduct could apply to the conduct that Mr. Chesebro has admitted to:

- Rule 1.2(d) – counseling or assisting a client in conduct the lawyer knows is illegal or fraudulent.
- Rule 4.1 – knowingly making a false statement to a third person in the course of representing a client. *Matter of Rogan* found that the forged judicial order in that case violated Rule 4.1.¹⁸
- Rule 8.4(d) – engaging in conduct prejudicial to the administration of justice. While “prejudic[e] to the administration of justice” typically involves the justice system, Rule 8.4 may be applicable here because Congress’s certification of a presidential election is more a quasi-judicial function than it is a legislative one.
- Rule 8.4(h) – engaging in conduct that adversely reflects on the lawyer’s fitness as a lawyer. *Matter of Toback* found that the conduct involved in that case violated Rule 8.4(h).¹⁹

¹⁶ See 208 A.D.3d 22, 26; 170 N.Y.S.3d 556, 559 (3d Dept. 2022).

¹⁷ 199 A.D.3d 99; 153 N.Y.S.3d 457, 460 (1st Dept. 2021).

¹⁸ See note 16 *supra*.

¹⁹ See note 17 *supra*.

In conclusion, we submit that the conduct that Mr. Chesebro has now admitted to warrants his disbarment. We again urge you to investigate Mr. Chesebro's conduct and impose appropriate sanctions.

Respectfully submitted,

Lawyers Defending American Democracy, Inc.

By: _____/s/_____

John T. Montgomery

Board Member, Lawyers Defending American Democracy

By: _____/s/_____

James W. Conrad, Jr.

LDAD Co-Author