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# LAWYERS DEFENDING AMERICAN DEMOCRACY

October 30, 2023

George S. Cardona Esq.  
Office of Chief Trial Counsel  
The State Bar of California  
845 South Figueroa Street  
Los Angeles, CA 90017  
[REDACTED]

Re: Professional Responsibility Investigation of Kenneth John Chesebro  
California Bar No. 236022

Dear Chief Trial Counsel Cardona:

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 December 6, 2022, LDAD filed an ethics complaint against Kenneth J. Chesebro because he violated multiple rules of the California Rules of Professional Conduct (RPC) while representing former President Donald Trump and the Trump Campaign.

On September 8 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,<sup>1</sup> (ii) the indictment of Mr. Chesebro, along with the former president and seventeen other individuals filed in Fulton County, Georgia on August 14,<sup>2</sup> and (iii) an August 8 blog post by Harvard Law School professor Laurence H. Tribe.<sup>3</sup>

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.<sup>4</sup> We write now to review the consequences of that plea under California law and to describe how that plea further

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<sup>1</sup> *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\\_Trump\\_23\\_cr\\_257.pdf](https://www.justice.gov/storage/US_v_Trump_23_cr_257.pdf).

<sup>2</sup> *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>.

<sup>3</sup> 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/>.

<sup>4</sup> 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>.

establishes Mr. Chesebro’s ethical violations. As explained below, while his lawyer may “expect[] him to keep” his law license,<sup>5</sup> Mr. Chesebro’s plea instead requires 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.<sup>6</sup>

While the indictment charged Mr. Chesebro with six counts of violating four statutes, he was allowed to plead guilty to a single count of conspiracy<sup>7</sup> to knowingly file a false document in a public record.<sup>8</sup> As explained below, that plea should result in Mr. Chesebro’s “summary disbarment” on either of two grounds.

Under Section 6101 of the California Business and Professions Code (BPC), “[a] plea . . . of guilty . . . is deemed to be a conviction within the meaning of . . . sections” 6101 and 6102.<sup>9</sup> Chesebro was sentenced after entering his plea, and so his conviction is final.<sup>10</sup> Under Section 6102 of the BPC, “[a]fter the judgment of conviction of an offense . . . has become final . . . , the Supreme Court shall summarily disbar the attorney if the offense is a felony under the laws of California, the United States, or any state or territory thereof, and either: (1) an element of the offense is the specific intent to deceive, defraud, steal, or make or suborn a false statement, or involved moral turpitude, or (2) the facts and circumstances of the offense involved moral turpitude.”<sup>11</sup>

Section 6102 of the BPC explains that, “[f]or purposes of this section, a conviction under the laws of another state or territory of the United States shall be deemed a felony if:

- (1) The judgment or conviction was entered as a felony [and]

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<sup>5</sup> “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>.

<sup>6</sup> 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>.

<sup>7</sup> Georgia Code § 16-4-8.

<sup>8</sup> *Id.* § 16-10-20.1(b)(1).

<sup>9</sup> California Business and Professions Code § 6101(e).

<sup>10</sup> “Kenneth Chesebro: Pro-Trump lawyer pleads guilty in Georgia election subversion case, implicates Trump in fake elector conspiracy,” CNN (Oct. 20, 2023), available at <https://www.cnn.com/2023/10/20/politics/kenneth-chesebro-georgia-election-subversion/index.html#:~:text=Chesebro%20pleaded%20guilty%20to%20one.that%20sentence%20at%20Friday%207s%20hearing>.

<sup>11</sup> California Business and Professions Code § 6102(c).

(2) The elements of the offense for which the licensee was convicted would constitute a felony under the laws of the State of California at the time the offense was committed.”<sup>12</sup>

Under Georgia law, both the underlying offense and the conspiracy to which Mr. Chesebro pled guilty are felonies.<sup>13</sup> The same is true under California law: the underlying offense of falsifying public documents is a felony,<sup>14</sup> and a conspiracy to commit such a felony is itself a felony.<sup>15</sup>

Mr. Chesebro’s counsel have made much of the fact that his plea specifies that the crime to which he pled guilty does not involve moral turpitude.<sup>16</sup> That conclusion is not binding on California courts, however, which have found that the crime of filing a falsified public document *does* involve moral turpitude. Indeed, the California Supreme Court, sitting in bank, has stated clearly that falsifying a document to be used in evidence is a “crime[] involving moral turpitude,”<sup>17</sup> adding that “falsifying documents to be used in evidence [is a] gross crime[] and warrant[s] disbarment in the absence of mitigating circumstances.”<sup>18</sup> Accordingly, the Review Department of the State Bar of California has held that filing a false marriage application is “an act of moral turpitude” that justifies disbarment.<sup>19</sup> A conspiracy to commit this crime would logically involve moral turpitude as well.

But whether or not the crime which Mr. Chesebro admitted committing involves moral turpitude, an element of the underlying offense, in both Georgia and California, is the specific intent to make a false statement, thus independently justifying summary disbarment under BPC Section 6102(c). This basis for disbarment also ties more closely to the RPC rule most directly violated by Mr. Chesebro, i.e., “engag[ing] in conduct involving dishonesty, fraud, deceit or misrepresentation.”<sup>20</sup>

Many other California Rules of Professional Conduct could, of course, also apply to the conduct that Mr. Chesebro has admitted to:

- Rule 1.2.1(a) – counseling or assisting a client in conduct the lawyer knows is criminal or fraudulent.

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<sup>12</sup> *Id.* § 6102(d).

<sup>13</sup> See *Georgia Code* §§ 16-4-8, 16-10-20.1(c).

<sup>14</sup> The California analog to the Georgia offense of knowingly filing a false document in a public record is California Penal Code § 115(a), which provides that “every person who knowingly . . . offers any false . . . instrument to be filed . . . in any public office within this state, which instrument, if genuine, might be filed, registered, or recorded under any law of this state or of the United States, is guilty of a felony.” See *Matter of Lowney*, 2012 WL 5406782 (Review Dep’t of the State Bar of California April 5, 2012) (filing a false marriage application violates California Penal Code § 115).

<sup>15</sup> See California Penal Code § 182, specifying that persons who “conspire to commit any . . . felony [beside others not relevant here] shall be punishable in the same manner and to the same extent as is provided for the punishment of that felony.”

<sup>16</sup> “Trump co-defendant Kenneth Chesebro pleads guilty in Georgia election case,” THE WASHINGTON POST (Oct. 20, 2023), available at <https://www.washingtonpost.com/national-security/2023/10/20/chesebro-guilty-plea-trump-georgia/>.

<sup>17</sup> *In re Dedman*, 17 Cal.3d 229, 231; 550 P.2d 1040, 1041, 130 Cal. Rptr. 504, 505 (Cal. 1976).

<sup>18</sup> 17 Cal.3d at 233; 550 P.2d at 1042; 130 Cal. Rptr. at 506.

<sup>19</sup> See *Matter of Lowney*, *supra* note 14.

<sup>20</sup> See RPC Rule 8.4(c).

- Rule 4.1(a) – knowingly making a false statement of material fact to a third person in the course of representing a client.
- Rule 8.4(b) – committing a criminal act that adversely reflects on the lawyer’s honesty, trustworthiness or fitness as a lawyer.
- 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.

The State Bar’s Standards for Attorney Sanctions for Professional Misconduct determine the appropriate sanction for a given instance of misconduct based on the presence of mitigating or aggravating circumstances. The latter can include “significant harm to the client, the public, or the administration of justice.”<sup>21</sup> The “purpose” of Mr. Chesebro’s conspiracy to falsify electoral certificates – by his own admission – was to “disrupt and delay the joint session of Congress on January 6, 2021” and to “violate” the Constitution and federal law by subverting a validly conducted presidential election.<sup>22</sup> It is difficult to imagine a more significant degree of harm to the public than to overthrow its choice of a U.S. president.

In conclusion, we submit that the conduct that Mr. Chesebro has now admitted to requires 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

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<sup>21</sup> Rules of Procedure of the State Bar of California, Title IV, Standard 1.5(j); available at <https://www.statebarcourt.ca.gov/Portals/2/documents/Rules/Rules-of-Procedure.pdf>. The fact that potential harm was not realized does not detract from its significance. *See, e.g., Matter of Guillory*, 2015 WL 2406159 (Review Dep’t of the State Bar of California May 19, 2015) (repeated convictions for driving under the influence are aggravating circumstances notwithstanding the fact no one was actually harmed by lawyer’s drunken driving).

<sup>22</sup> “Back-to-back plea deals pose grave legal threat to Donald Trump,” CNN (Oct. 21, 2023), available at <https://www.cnn.com/2023/10/21/politics/chesebro-powell-plea-deals-trump-takeaways/index.html>.