



**LAWYERS
DEFENDING
AMERICAN
DEMOCRACY**

VIA EMAIL

December 15, 2023

Ms. Jessica E. Yates
Attorney Regulation Counsel
Ralph L. Carr Judicial Center
Colorado Supreme Court
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**Re: Request for Commencement of Disciplinary Proceeding Against Jenna L. Ellis
(also known as Jenna Lynn Rives), Colorado Registration Number 44026**

Dear Ms. Yates:

The States United Democracy Center is a nonpartisan organization advancing free, fair, and secure elections. We focus on connecting state and local officials, public-safety leaders, and pro-democracy partners across America with the tools and expertise they need to safeguard our democracy. Our work centers on making sure every election is safe, every vote is counted, and every voice is heard. Critical to our mission is helping to ensure that democracy violators are held accountable, including those in the legal profession who betray their professional responsibilities to uphold the rule of law.

Lawyers Defending American Democracy (LDAD) is a nonpartisan organization, the purpose of which is to foster adherence to the rule of law. LDAD is devoted to ensuring that individual lawyers are held accountable for participating in unethical conduct that assaults fundamental principles of our American democracy.

We, together with the additional signatories below, write to urge the Office of Attorney Regulation Counsel (OARC) to promptly commence a formal disciplinary proceeding against Jenna Ellis seeking her disbarment in light of her recent guilty plea to a felony in Georgia and to initiate an interim suspension proceeding under Colo. R. Civ. P. 242.22.

The Supreme Court of Colorado has stated: “Lawyers serve our system of justice, and if lawyers are dishonest, then there is a perception that the system, too, must be dishonest. Certainly, the reality of such behavior must be abjured so that the perception of it may diminish.”

In re Pautler, 47 P.3d 1175, 1179 (Colo. 2002). Attorneys barred in Colorado take an oath to “employ such means as are consistent with truth and honor.”¹ As set forth below, through acts undertaken in late 2020, Ms. Ellis violated that oath.

I. Brief Background About Ms. Ellis’s Felony Guilty Plea

On August 14, 2023, Ms. Ellis and 18 others were charged in Fulton County, Georgia with a conspiracy to overturn the 2020 presidential election.² Ms. Ellis was also charged with a second felony count arising from her participation in a December 3, 2020 meeting with certain members of the Georgia Senate, during which she and two of her co-defendants – Rudolph Giuliani and Ray Smith III, also Trump campaign attorneys – were alleged to have solicited the Senate members to unlawfully appoint presidential electors from the State of Georgia, in violation of the Senators’ oaths of office.

On October 24, 2023, Jenna Ellis pled guilty to a felony charge arising from her conduct as counsel to the Trump campaign in that December 3 meeting. Specifically, she pled guilty to intentionally aiding and abetting Giuliani and Smith in knowingly, willfully, and unlawfully making certain false statements (enumerated in section II, *infra*) to members of the Georgia Senate.³ These false statements attempted to cast doubt on the legitimate results of the 2020 presidential election, in violation of Official Code of Georgia Annotated (O.G.C.A.) § 16-10-20.⁴

O.G.C.A. § 16-10-20 reads, in pertinent part: “A person who knowingly and willfully... makes a false, fictitious, or fraudulent statement or representation...in any matter within the jurisdiction of any department or agency of state government or of the government of any county, city, or other political subdivision of this state shall, upon conviction thereof, be punished by a fine of not more than \$1,000.00 or by imprisonment for not less than one nor more than five years, or both.” In Ms. Ellis’s case, the false statements at issue (*i.e.*, about the integrity of the outcome of the 2020 presidential election) were within the jurisdiction of, *inter alia*, the Office of the Georgia Secretary of State and the Georgia Bureau of Investigation.

Under the terms of her plea agreement, Ms. Ellis will serve five years on probation, pay \$5,000 in restitution, serve 100 hours of community service, must write an apology letter to the

¹ *Colorado Oath of Admission*, Office of Attorney Regulation Counsel, available at: <https://coloradosupremecourt.com/Current%20Lawyers/Oath.asp> (Last visited Nov. 20, 2023).

² See Indictment, *State of Georgia v. Donald J. Trump, et al.*, 23SC188947 (Aug. 14, 2023), available at <https://int.nyt.com/data/documenttools/georgia-indictment-trump/daed97d37562a76f/full.pdf>.

³ An aider and abettor is someone who has knowledge of the intended crime and shared in the criminal intent of the principal actor. See *Denson v. State*, 353 Ga. App. 450, 452 (2020).

⁴ A true and correct copy of the filed Accusation is attached hereto as Attachment 1.

citizens of Georgia, testify truthfully against her co-defendants, and fully cooperate with the prosecution of the remaining alleged co-conspirators.⁵

II. The False Statements Provide a Strong Basis for Further Discipline

The false statements at issue in Ms. Ellis’s plea are distinct from the misrepresentations underlying Ms. Ellis’s previous censure and provide a strong basis for further discipline. *Compare People v. Ellis*, 526 P.3d 958, 959-960 (Colo. O.P.D.J. March 8, 2023) (Opinion Approving Stipulation to Discipline Under Colo. R. Civ. P. 242.19(c) with Criminal Accusation (Attachment 1). The falsehoods for which Ms. Ellis was previously censured related mainly to her claims on Twitter and in media appearances that the 2020 election was stolen. The falsehoods involved in her Georgia felony guilty plea were allegations of fraud and misconduct by Georgia voters, election officials and workers. These allegations fueled the spread of disinformation about Georgia’s election process and election workers, undermine trust in American elections, discourage public participation in the electoral process, pose a threat to the safety and well-being of election workers and, accordingly, threaten democracy as a whole.

The false statements at issue in Ms. Ellis’s plea are that: Georgia election officials illegally permitted: (1) “at least 96,000 mail-in ballots [to be] counted...despite there being no record of those ballots having been returned”; (2) 2,506 Georgia felons to vote; (3) 66,248 underage people to register to vote; (4) “at least 2,423” people to vote who were not listed as registered; (5) “10,315 or more” dead people to vote; (6) 1,043 people to vote who had illegally registered using a post office box; and, further, (7) that “Fulton County election workers at State Farm Arena ordered poll watchers and members of the media to leave the tabulation area on the night of November 3, 2020, and continued to operate after ordering everyone to leave[]” thus dishonestly implying that election workers were engaged in nefarious conduct. *See* Att. 1 ¶¶ 1-7.

There was no reasonable basis for these explosive and false statements to the Georgia state senators. In fact, investigation of these allegations showed that: (1) the 96,600 number represented the number of ballots that were *cancelled, not* counted;⁶ (2) a maximum of seventy-four potential felons voted, *not* 2,506; (3) zero individuals voted who were not listed in the State’s records as having been registered to vote, *not* “at least 2,423”; (4) two potentially deceased individuals were given credit for voting, *not* “10,315 or more”; (5) four voters requested a ballot prior to turning 18, the minimum age for voter eligibility, *not* 66,248, and all four turned 18 prior to the election; and (6) that the addresses alleged to be post office boxes appeared to be apartments.⁷ Investigation also showed that “observers and media were not asked

⁵ *See* Video of plea hearing, *State of Georgia v. Jenna Ellis*, 23SC188947 (Oct. 24, 2023), available at <https://www.youtube.com/watch?v=Eu7uzRFDpTY>.

⁶ *See* Report of Kenneth R. Mayer, Ph.D., filed in *Pearson v. Kemp*, 1:20-cv-04809-TCB at pp. 1, 4-5 (Dec. 5, 2020). A true and correct copy of Dr. Mayer’s Report is attached as Attachment 2.

⁷ *See* Jan. 4 Press Conference of Gabriel Sterling, Chief Operating Officer of the Georgia Secretary of State’s Office, available at <https://www.c-span.org/video/?507710-1/georgia-election-security>; and Jan. 6, 2021 Letter to Congress from Georgia Secretary of State Brad

to leave” but rather, that they “simply left on their own when they saw one group of workers, whose job was only to open envelopes and who had completed that task, also leave.”⁸

Once the false statements were made to the Georgia state senators, they were then repeated and amplified by other Trump allies and media outlets and incorporated into various reports and lawsuits, thereby perpetuating deceptive and incendiary conspiracy theories. For example, on Dec. 17, 2020, Georgia state senator William Ligon, the Chairman of the Georgia Senate’s Judiciary Committee, issued a report based on the December 3, 2020 hearing, which regurgitated these same falsehoods.⁹ A couple of weeks later, on December 31, 2020, the Trump campaign filed *Trump v. Kemp*, a frivolous lawsuit against Georgia’s Governor and Secretary of State in the Northern District of Georgia. *See Trump v. Kemp*, 1:20-CV-5310-MHC, 2020 WL 7872546 at ¶¶ 9, 17 (N.D. Ga., Dec. 31, 2020, Complaint).¹⁰ The lawsuit cited the same falsehoods as a basis for its claim that “illegal votes have been counted which Plaintiff contend [sic] are sufficient to change the outcome of the election or place the election in doubt, and, therefore, the vote tabulations in Georgia cannot be accurately certified.” *Id.* at ¶ 42. The District Court denied the requested relief on January 5, 2021. *See Trump v. Kemp*, 511 F. Supp. 3d 1325 (N.D. Ga. 2021).

The December 3 falsehoods also exposed election workers in Georgia to harassment and threats of violence.¹¹ A defamation complaint filed by Fulton County election workers Ruby

Raffensperger at pp. 8-9. A true and correct copy of the Raffensperger letter is attached as Attachment 3.

⁸ *See* Declaration of Frances Watson, Chief Investigator in the Office of the Georgia Secretary of State, at ¶ 6. A true and correct copy of the Watson Declaration is attached as Attachment 4. *See also* Att. 3 at p. 7 (Jan. 6 Raffensperger letter) (noting that partisan poll watchers and other monitors remained at the election warehouse where results were being tabulated and were aware that absentee ballot scanning was continuing at State Farm Arena).

⁹ *See* Hon. William T. Ligon, *The Chairman’s Report of the Election Law Study Subcommittee of the Standing Senate Judiciary Committee* (Dec. 17, 2020) at pp. 9-10. A true and correct copy of the Ligon Report is attached as Attachment 5.

¹⁰ Paragraph 9 of the *Trump v. Kemp* Verified Complaint incorporates by reference the allegations in a state court complaint the Trump campaign filed on December 4, 2020, styled as *Trump v. Raffensperger*, which it attaches as exhibit 1. A true and correct copy of exhibit 1 is attached hereto as Attachment 6. The false statements at issue are at ¶¶ 60-68, 87-88, 101-102, 187-191.

¹¹ *See* Dec. 1, 2020 Press Conference of Gabriel Sterling, Chief Operating Officer of the Georgia Secretary of State’s Office (reporting that false statements like the ones at issue were leading to harassment and death threats against officials overseeing the Georgia’s recount), available at <https://tinyurl.com/2f6dhrtu>. *See also* Jason Szep & Linda So, *Trump Campaign Demonized Two Georgia Election Workers – and Death Threats Followed*, Reuters (Dec. 1, 2021), <https://www.reuters.com/investigates/special-report/usa-election-threats-georgia/>; Lindsay

Freeman and Shaye Moss describes in detail the instant and devastating impact on their lives of the December 3 hearing. See *Freeman v. Giuliani et al.*, No. 1:21-CV-03354, 2021 WL 6102228 at ¶¶ 12-16, 59-64 (D.D.C., Dec. 23, 2021, [Complaint](#)).¹² The *Freeman* Complaint alleges how, “[o]n December 3, 2020, Donald Trump’s legal team—including Defendant Giuliani—testified before the Georgia Senate, alleging that fraud and misconduct had occurred during Georgia’s November 2020 election.” *Id.* ¶ 59 & n. 54.¹³ *Id.* at ¶¶ 59-60. It explains how Giuliani and the media then amplified the Dec. 3 false statements, including their statements about how Fulton County election workers at State Farm Arena ordered poll watchers and members of the media to leave the tabulation area. *Id.* ¶¶ 61-64. The *Freeman* Complaint further alleges those “lies had instant and profound consequences. Both Ms. Freeman and Ms. Moss received an immediate onslaught of violent and racist threats and harassment. Their personal and professional reputations have been destroyed. To this day, Ms. Freeman and Ms. Moss fear for their physical safety and have suffered a devastating emotional toll.” *Id.* at ¶ 12. See also ¶ 13 (explaining how, “[a]t the height of Defendants’ campaign of disinformation, Ms. Freeman, at the recommendation of the FBI, fled her home and did not return for two months.”)

III. OARC Should Initiate a Formal Disciplinary Proceeding Against Ms. Ellis

By engaging in the criminal conduct to which she pled guilty, Ms. Ellis violated, at least, rules 8.4(a), (b), (c) and 4.1(b) of the Colorado Rules of Professional Conduct (“Colo. RPC”). Colo. RPC 8.4 states, in relevant part, that it is professional misconduct for a lawyer to: “(a) 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; (b) commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects; [or] (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation[.]” Colo. RPC 4.1(b) prohibits lawyers, in the course of representing a client, from “knowingly fail[ing] to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client[.]”

As a New York court observed when suspending the bar license of Trump attorney Rudolph Giuliani, including for the false statements at issue in Ms. Ellis’s plea:

Whitehurst, Christina A. Cassidy, *Election workers are being bombarded with death threats, the U.S. government says* (Aug. 31, 2023), available at <https://tinyurl.com/3ra572mt>.

¹² On Oct. 31, 2022, the District Court denied Giuliani’s motion to dismiss. *Freeman v. Giuliani*, 2022 WL 16551323 (D.D.C., Oct. 31, 2022). On Aug. 30, 2023, the District Court entered a default judgment against Giuliani. *Freeman v. Giuliani*, 2023 WL 5600316 (D.D.C., Aug. 30, 2023). On Dec. 3, 2023, the District Court denied Giuliani’s motion seeking to convert the scheduled jury trial on damages to a bench trial. *Freeman v. Giuliani*, 2023 WL 8360664, at *1 (D.D.C. Dec. 3, 2023).

¹³ Citing Beau Evans, *Georgia Senate Panel Hosts Trump Attorney Giuliani As Election Officials Dispute Fraud Claims*, Augusta Chron. (Dec. 3, 2020), available at <https://www.augustachronicle.com/story/news/2020/12/03/georgia-senate-panel-probingelection-hosts-trump-attorney-giuliani/3818365001/>.

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. When those false statements are made by an attorney, it also erodes the public's confidence in the integrity of attorneys admitted to our bar and damages the profession's role as a crucial source of reliable information. It tarnishes the reputation of the entire legal profession and its mandate to act as a trusted and essential part of the machinery of justice.

Matter of Giuliani, 146 N.Y.S.3d 266, 277-279, 283 (2021) (internal citations omitted) (concluding Giuliani's false statements to members of the Georgia Senate on Dec. 3, 2020 violated NY RPC 4.1 and 8.4(c)). The same observation applies to Ms. Ellis under the applicable Colorado analogs to those rules.¹⁴

The fact that Ms. Ellis entered her guilty plea under Georgia's first offender law has no bearing on whether she should face discipline.¹⁵ The Georgia Supreme Court routinely upholds attorney discipline imposed following first-offender pleas, even though a guilty plea does not constitute a "conviction" under Georgia law. *See, e.g., In the Matter of Davis*, 292 Ga. 897 (2013); *In re Waldrop*, 283 Ga. 80 (2008); *In the Matter of Caroway*, 279 Ga. 381 (2005); *In the Matter of Lewis*, 282 Ga. 649 (2007); and *In the Matter of Calhoun*, 268 Ga. 877 (1998). While Colorado does not have an analogous first-offender statute, Colorado courts have imposed attorney discipline for crimes, like Ellis's, involving dishonesty, based on the attorney's having pled guilty to a felony. *See In re DeRose*, 55 P.3d 126, 128 (Colo. 2002) (upholding disbarment of an attorney who pled guilty to a felony for purchasing money orders to assist a client in evading reporting requirements and who had received prior discipline by the Bar); *see also* Colo. R. Civ. P. § 241 (defining "conviction" to include a "plea of guilty...irrespective of: (1) whether entry of judgment or imposition of the sentence is suspended or deferred[.]")

Likewise, the fact that Ms. Ellis negotiated into her plea deal a statement that her crime did not involve moral turpitude is of no moment.¹⁶ The crime to which she pled guilty – one involving false statements in the context of her representation of former President Trump –

¹⁴ New York's Rule 8.4(a)-(c) is materially identical to Colorado's. Unlike in the Colorado Rules, New York's Rule 4.1 does not have a subsection (b).

¹⁵ Under Georgia's first offender law, O.C.G.A § 42-8-60, "[a] first offender's guilty plea does not constitute a 'conviction' as that term is defined in the Criminal Code, but rather, under the First Offender Act, until an adjudication of guilt is entered, there is no conviction; the case has, in effect, been suspended during the period of probation until eventually the probation is either revoked or it is discharged, and unless it is revoked, there is no conviction." *Collins v. State*, 338 Ga.App. 886, 889 (2016).

¹⁶ At her plea hearing, Ms. Ellis's counsel explained the inclusion of the moral turpitude language was intended "to assist her in other venues." *See* Video of plea hearing at 15:56, *State of Georgia v. Jenna Ellis*, 23SC188947 (Oct. 24, 2023), available at <https://www.youtube.com/watch?v=Eu7uzRFDpTY>.

unquestionably reflects adversely on her fitness to practice law. *See* Colo. RPC 8.4 cmt. 2. Indeed, as the Presiding Disciplinary Judge of the Supreme Court of Colorado noted in approving her prior discipline, and as Ms. Ellis previously stipulated, her misrepresentations as Trump’s personal counsel “undermined the American public’s confidence in the presidential election, violating her duty of candor to the public.” *People v. Ellis*, 526 P.3d 958, 962 (Colo. O.P.D.J. 2023).

IV. OARC Should Seek Ms. Ellis’s Disbarment and Interim Suspension

Colorado courts apply the American Bar Association *Standards for Imposing Sanctions* (“ABA Standards”) and Colorado Supreme Court case law to determine when disbarment is appropriate. *People v. Borzillo*, 464 P.3d 281, 283 (Colo. O.P.D.J. 2016). ABA Standard 5.11 provides that “disbarment is generally appropriate when: (a) a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft;” or (b) “a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyers fitness to practice.” *See, e.g., People v. Borzillo*, 464 P.3d 281, 283 (Colo. O.P.D.J. 2016) (disbarring attorney who pled guilty to bank fraud); *People v. Hilgendorf*, 895 P.2d 544, 544 (Colo. 1995) (upholding disbarment of an attorney convicted of making false statements to federal banks).

The crime to which Ms. Ellis pled guilty – intentionally aiding and abetting her co-counsel in knowingly, willfully, and unlawfully making false statements that were clearly intended to undermine public confidence in the 2020 presidential election – undoubtedly runs afoul of both prongs of ABA Standard 5.11.¹⁷ Indeed, it is difficult to imagine conduct more antithetical to the rule of law that attorneys take an oath to uphold. *See People v. Zimmerman*, 470 P.3d 827, 836 (Colo. O.P.D.J. 2016) (disbarring attorney whose “acts, taken together, amount to a renunciation of the oath Respondent swore when he gained admission to the Colorado bar: to maintain respect due to courts; to uphold the rule of law; to employ only such means that are consistent with truth and honor; and to treat all persons with honesty.) Accordingly, disbarment is appropriate.

Further, Colo. R. Civ. P. 242.22 provides, in pertinent part: “the supreme court may suspend a respondent’s license on an interim basis if there is reasonable cause to believe that: (1) The respondent is causing or has caused substantial public or private harm; and (2) The respondent has: (A) Been convicted of a serious crime[.]” In Colorado, the term “serious crime” includes “any felony” or “any lesser crime a necessary element of which... involves... misrepresentation[.]” Colo. R. Civ. P. § 241. The term “conviction” refers to “any determination in a criminal matter, including at a federal, state, municipal, or other level, that a person is guilty, whether the determination rests on a verdict of guilty, a judicial finding of guilt, a *plea of guilty*, an Alford plea, or a plea of nolo contendere, *irrespective of (1) whether entry of judgment or imposition of the sentence is suspended or deferred by the court, (2) whether the person is appealing the determination, and (3) whether sentencing has occurred.*” *Id.* (Emphasis added).

¹⁷ An aider and abettor is someone who has knowledge of the intended crime and shared in the criminal intent of the principal actor. *See Denson*, 353 Ga. App. at 452.

As shown above, the crime to which Ms. Ellis pled guilty caused substantial public harm and it is a felony. Thus, it is a “serious crime”. Were Ms. Ellis to argue that aiding and abetting somehow constitutes a “lesser crime,” the fact that it involves misrepresentation still brings it within the definition of “serious crime.” *See* Colo. R. Civ. P. § 241. Thus, the Supreme Court may suspend her license on an interim basis. *See* Colo. R. Civ. P. 242.22.

While Ms. Ellis will likely claim that her March 2023 stipulation to discipline and her October 2023 guilty plea reflect acceptance of responsibility thereby warranting departure from the presumptive sanction of disbarment, a departure is unwarranted here. First, her public statements after her censure by OARC and, even at her October 24 allocution, reflect an effort to shift blame to others and minimize her responsibility. In a tweet in the wake of her censure in Colorado, instead of showing remorse for her actions to undermine American democracy, Ms. Ellis attacked the process, writing to her followers that: “This is and always was political lawfare to intimidate lawyers from representing Trump or Republicans candidates, especially in election challenges and try to destroy our livelihood and reputation.”¹⁸ At her allocution in Georgia, she attempted to cast her criminal conduct as a mere failure to conduct due diligence “to make sure that the facts the other lawyers alleged to be true, were in fact true.” Instead of accepting responsibility, she stated, “I relied on others, including lawyers with many more years of experience than I to provide me with true and reliable information, especially since my role involved speaking to the media and legislators in various states.” These statements elide her more than a decade of experience as a barred attorney and fall far short of demonstrating the type of contrition that would warrant lesser discipline.¹⁹

Conclusion

In light of the foregoing, we urge OARC to promptly initiate a formal disciplinary proceeding against Ms. Ellis seeking her disbarment and to initiate an interim suspension proceeding under Colo. R. Civ. P. 242.22.

Sincerely,

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¹⁸ Jenna Ellis (@jennaellisesq), Twitter (Mar. 9, 2023, 7:03 AM), available at <https://x.com/JennaEllisEsq/status/1633815849676021760?s=20>.

¹⁹ Ms. Ellis has been barred in Colorado for more than a decade.

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