



The following is a presentation made by Gershon (“Gary”) Ratner, board member and co-founder of Lawyers Defending American Democracy. These remarks were delivered at the American Bar Association’s 50th National Conference on Professional Responsibility. Attorney Ratner was one of several distinguished lawyers participating on a panel entitled: “How to Proceed? Addressing the Public’s Interest and the Profession’s Concern When Discipline Complaints Are Based on Public Information, Not Personal Knowledge.”

This panel took place on May 30, 2025.

I’m honored to be the Panel’s representative of organizations that have filed ethics complaints based on public information. I’d like to touch briefly on five topics this afternoon:

- 1) The nature of Lawyers Defending American Democracy (LDAD), its role, and my role, in filing ethics complaints.
- 2) The character and number of complaints we’ve filed.
- 3) What “criteria” we use in determining whom to file complaints against.
- 4) What “process” we go through before, and sometimes after, filing a complaint, and
- 5) Our views as to the central question: “What Issues Do Public Complaints Raise for Bar Counsel, Respondents and the Public?”

- I. Along with Scott Harshbarger, former Massachusetts Attorney General, I’m the Co-Founder of LDAD, a non-partisan, non-profit advocacy organization of lawyers. It was created beginning in late 2018 to speak out against the then-President’s serious threats to the fundamental principles and norms of our democracy and the rule of law and to galvanize lawyers nationwide to speak out likewise.

One of LDAD’s forms of advocacy has been to pioneer the filing of ethics complaints against lawyers who we believe have committed serious ethics violations in matters that threaten our constitutional democracy and the rule of law. I’ve been heavily involved in this effort both as a principal drafter of certain complaints, including our first complaint filed in July 2020, and as Chair of the Review Committee, editing other complaints.

- II. Summarizing our complaints, LDAD has filed 11 ethics complaints, some in collaboration with other organizations. All the complaints have been based on “public information.” They have alleged a number of ethics violations, including: “conduct involving dishonesty, ... deceit or misrepresentation” [8.4(c)], “knowingly false statements of law or material fact to a tribunal” [8.4(d)],



“frivolous” claims [3.03], “knowingly making a false statement of fact or law to a third person” [4.1] and/or “serious interference with the administration of justice” [8.4(d)].

In 4 complaints, the respondent was disciplined by disbarment or suspension, and in 1 other, suspension was recommended by the hearing panel, pending decision by the disciplinary board.

In the most well-known case, disbaring Rudolph Giuliani, the Appellate Division of New York’s Supreme Court held, in part, that:

“The seriousness of respondent’s misconduct cannot be overstated. Respondent flagrantly misused his prominent position as the personal attorney for former President Trump and his campaign, through which respondent repeatedly and intentionally made false statements, some of which were perjurious, to the federal court, state lawmakers, the public, the AGC [Attorney Grievance Committee], and this Court concerning the 2020 Presidential election, in which he baselessly attacked and undermined the integrity of this country’s electoral process. In so doing, respondent not only deliberately violated some of the most fundamental tenets of the legal profession, but he also actively contributed to the national strife that has followed the 2020 Presidential election, for which he is unrepentant.”

Of the remaining 6 complaints: 3 were dismissed, either because they were held to be barred by the State Constitution or by State statute, or there was a lack of evidence, particularly due to a key witness being unwilling to testify in a disciplinary proceeding. We believe that 2 others are pending before the disciplinary authority. [In LDAD’s first complaint, the disciplinary authorities refused to undertake an investigation because it was not based on “personal knowledge”.]

- III. As to what “criteria” LDAD uses to determine which attorneys to file ethics complaints against, LDAD considers several factors. First, given LDAD’s mission, a major factor is whether the attorney’s conduct involves a matter that attacks American democracy or the rule of law, including the fundamental right to vote and have one’s vote counted.
- Second, if the reported harmful conduct is true, is there a strong case that it would violate one or more ethics rules?
- Third, are the facts of misconduct – contained in publicly available, reliable sources – sufficiently strong that they support a prima facie case that the ethics rules have been violated?



Fourth, did the lawyer play a leading role in the misconduct or only a subordinate role?

Fifth, are the violations and/or the impact of the violations sufficiently serious that the public should reasonably expect that the disciplinary authorities would take some action?

Sixth, and finally, is our analysis supported by recognized experts in legal ethics?

In short, if a potential respondent took a leading role in conduct that caused serious harm to American democracy and/or the rule of law, responsibly reported public facts establish a prima facie case of ethics violations, and ethics experts agree with our analysis, I believe that such a lawyer would be a likely candidate for an LDAD complaint.

- IV. As to the process that LDAD goes through before filing a complaint, it is very intensive. Experienced litigators, including members of LDAD's Board of Directors, take the lead in investigating to what extent the above criteria apply to a particular attorney. In doing this investigation, the lead attorney involves at least one other experienced litigator, and sometimes more, in conducting the factual investigation and legal research to evaluate whether to recommend filing a complaint against a particular attorney.

If the lead attorney and the other attorneys on the team conclude that the factors described above warrant filing a complaint, they prepare an initial draft and then edit it among themselves, typically going through multiple drafts. Based on the prototype that LDAD developed in its first ethics complaint, our complaints are a detailed hybrid of a complaint or indictment and a legal brief in support, sometimes running more than 30 pages single-spaced.

Once the team is satisfied that the draft complaint is ready to be formally vetted, they submit it to LDAD's Review Committee. That Committee, composed of 3 Board members, scrutinizes the complaint and suggests edits to the drafting team for its consideration. When the Review Committee is satisfied with the proposed complaint, the Committee submits it to the Board for review, discussion and approval. No LDAD ethics complaint is filed unless it has been approved by the Board.

After a complaint has been filed, if important, new, relevant information is discovered, LDAD sometimes files a supplemental complaint or letter. If State law allows a respondent to contest a disciplinary proceeding in State court and allows non-parties to file amicus briefs in State court, LDAD files amicus briefs in support of the State Bar.



- V. Finally, a central question is whether Bar Counsel should notify public information complainants that Counsel has begun an investigation of their complaint, given that the complainant is likely to report that to the public? We believe that the ABA has already gone far toward answering this question in Model Rule for Lawyer Disciplinary Enforcement Rule 16(B)(3) and its Commentary. While disclosure to a “personal knowledge” complainant that an investigation has been begun is generally prohibited to protect a respondent’s confidentiality, Rule 16(B)(3) provides an express exception: Counsel “may” disclose the “pendency, subject matter, and status of an investigation... if ... (3) the proceeding is based upon allegations that have become generally known to the public [.]”

That is, the ABA already recognizes that there are powerful reasons why disclosure that an investigation has begun is appropriate for public information complainants, but not for “personal knowledge” complainants.

Specifically, the Commentary makes clear that: “The confidentiality that attaches prior to a finding of probable cause and the filing of formal charges is primarily for the benefit of the respondent and protects against publicity predicated upon unfounded accusations. If the ... nature of the accusation is already known to the public, the basis for confidentiality no longer exists.”

...

The public’s interest in knowing whether a complaint is being investigated is much stronger for LDAD complaints than for more traditional, potential public information complaints. For LDAD complaints, the harm is not the more typical financial or other injury that happens to a small number of people or organizations that may be adversely affected by a lawyer’s newsworthy local misconduct. Rather, the harm is much more consequential and impacts a vastly larger number of people, attacks the survival of our democracy and the rule of law, and threatens priceless liberties for more than 300 million Americans!

The public has a huge interest in knowing whether Bar Counsel is investigating meticulously documented charges of ethics violations in serious matters that directly threaten them. The public also has an important interest in knowing whether State disciplinary authorities are performing their duty to protect the public.

Although Model Rule 16(B)(3) gives Bar Counsel discretion as to whether to notify public information complainants that an investigation has been begun, Counsel should virtually always exercise that discretion to provide such notice, especially in cases involving threats to democracy and the rule of law.