

# REPORTERS COMMITTEE

FOR FREEDOM OF THE PRESS

1156 15th St. NW, Suite 1020  
Washington, D.C. 20005  
(202) 795-9300  
www.rcfp.org

Bruce D. Brown  
Executive Director  
bbrown@rcfp.org  
(202) 795-9301

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for purposes of identification.*

April 16, 2021

Attorney Grievance Committee  
Supreme Court of the State of New York  
Appellate Division, First Judicial Department  
180 Maiden Lane  
New York, New York 10038  
(212) 401-0800  
Email: AD1-AGC@nycourts.gov

## VIA E-Mail and First Class Mail

### **RE: Professional Responsibility Investigation of Rudolph W. Giuliani, Registration No. 1080498**

Dear Members of the Attorney Grievance Committee:

The Reporters Committee for Freedom of the Press (“Reporters Committee”) and the 32 news media organizations listed below write to ask that the Attorney Grievance Committee (the “Grievance Committee”) make available to the public all papers, records, and documents from any and all disciplinary proceedings currently pending against Mr. Rudolph W. Giuliani, New York Bar Registration No. 1080498.<sup>1</sup> As with the 1985 proceedings of the Grievance Committee against Mr. Roy M. Cohn, “good cause” exists here to provide access to proceedings involving Mr. Giuliani.

As news organizations and organizations that advocate for the newsgathering rights of journalists, the signatories to this letter have a strong interest in ensuring that the public has access to disciplinary proceedings and records pertaining to Mr. Giuliani. It is from this perspective that we write to emphasize the public interests at stake in this high-profile matter, and the benefits of public access.

From November 2020 until early this year, Mr. Giuliani served as lead legal counsel for former President Donald J. Trump in a series of unsuccessful lawsuits challenging the results of the 2020 presidential election. *See, e.g., Alan Feuer, Judge Dismisses Trump Lawsuit Seeking to Delay Certification in Pennsylvania*, N.Y. Times (Nov. 21, 2020), <https://perma.cc/AX95-26QD>. Mr. Giuliani also advocated outside the courtroom, providing, among myriad public statements, testimony at a committee hearing of the Georgia State Senate alleging that video footage showed election workers pulling suitcases

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<sup>1</sup> On Wednesday, April 14, 2021, counsel for the signatories to this letter contacted counsel for Mr. Giuliani, Robert Costello, to seek Mr. Giuliani’s position regarding the request for relief sought by this letter, but received no response.

of ballots from underneath a table for counting in secret. *See* Live Coverage of Georgia Senate Comm. Hearings on Election Issues, YouTube (Dec. 3, 2020), <https://perma.cc/4K47-K46Z>.

Mr. Giuliani's campaign culminated in a speech at the Ellipse in Washington, D.C. on January 6, 2021, where he continued to challenge the results of the presidential election and urged a crowd of President Trump's supporters to engage in "trial by combat." *'Let's have trial by combat' over election – Giuliani*, Reuters (Jan. 6, 2021), <https://perma.cc/VY97-7DMU>. Following that speech and others, a mob descended on the U.S. Capitol, temporarily halting Congress' certification of the presidential election and devolving into violence that led to the deaths of five people. Dalton Bennett et al., *41 minutes of fear: A video timeline from inside the Capitol siege*, Wash. Post (Jan. 16, 2021), <https://perma.cc/W83V-RH7U>.

On January 20, 2021, the non-partisan organization Lawyers Defending American Democracy (hereinafter "LDAD") filed an ethics complaint against Mr. Giuliani with the Grievance Committee, alleging that Mr. Giuliani "violated multiple provisions of the New York Rules of Professional Conduct while representing former President Donald Trump and the Trump Campaign" both in and out of the courtroom following the November 2020 election. *See* Letter from LDAD to Attorney Grievance Committee, Supreme Court of the State of New York, Appellate Division, First Judicial Department 1, 5, 9–10, 20 (Jan. 20, 2021), <https://perma.cc/2WCC-V3PF> (hereinafter the "LDAD Complaint").

A second ethics complaint was filed on January 21, 2021, on behalf of Michael Miller, the past president of both the New York State Bar Association and the New York County Lawyers' Association, and other current and past Bar leaders from throughout New York State. *See* Letter from Ronald C. Minkoff to Jorge Dopico, Esq., Chief Counsel, Attorney Grievance Committee, Supreme Court of the State of New York, Appellate Division, First Judicial Department (Jan. 21, 2021), <https://perma.cc/4UWH-ZJNS> (hereinafter the "Miller Complaint"); *see also* Statement of New York City Bar Association Concerning Grievance Complaints Filed Against Rudolph Giuliani 1–2 (Feb. 23, 2021), <https://perma.cc/Q67L-P5QU> (hereinafter the "New York City Bar Association Statement") (summarizing both the LDAD Complaint and the Miller Complaint).<sup>2</sup> The Miller Complaint, like the LDAD Complaint, alleges that Mr. Giuliani

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<sup>2</sup> News reports indicate that at least two additional ethics complaints against Mr. Giuliani have been filed. *See* Alan Feuer, *A state senator referred Rudy Giuliani for disbarment*, N.Y. Times (Jan. 11, 2021), <https://perma.cc/P78U-523J>; *see also* Letter from Rep. Ted W. Lieu and Rep. Mondaire Jones to Jorge Dopico, Esq., Chief Attorney of the Departmental Disciplinary Committee for the First Department (Jan. 8, 2021), <https://perma.cc/H96D-AHGL>. But the signatories to this letter have reason to believe that additional ethics complaints against Mr. Giuliani have been filed; in a January 11, 2021 statement, the New York State Bar Association (NYSBA) announced it had "received hundreds of complaints in recent months about Mr. Giuliani and his baseless efforts on behalf of President Trump to cast doubt on the veracity of the 2020 presidential

violated multiple Rules of Professional Conduct in his representation of President Trump following the November 2020 election. *See* Miller Complaint at 1–3.<sup>3</sup>

The “primary concern” of disciplinary proceedings against attorneys for alleged violations of the New York Rules of Professional Conduct “is the protection of the public in its reliance on the integrity and responsibility of the legal profession.” *Matter of Rowe*, 80 N.Y.2d 336, 341 (1992). To advance this goal, one of the key factors examined by the Grievance Committee is whether attorney discipline is appropriate to protect the public, maintain the integrity and honor of the profession, or deter others from similar conduct. *Id.*; *see also Matter of Holtzman*, 78 N.Y.2d 184, 190–92 (1991) (attorney reprimanded for making “false accusations” against a judge in furtherance of objective to “protect the public interest and maintain the integrity of the judicial system”). “In other words, the public consequences of Mr. Giuliani’s actions matter.” New York City Bar Association Statement at 9.

Though the Grievance Committee’s proceedings often remain confidential, N.Y. Judiciary Law § 90(10) allows the justices of the appellate division “upon good cause being shown . . . to permit to be divulged all or any part of [the] papers, records and documents” from “any complaint, inquiry, investigation or proceeding relating to the conduct or discipline of an attorney.” *See also* 22 NYCRR Part 1240.18(d) (permitting an application for access to proceedings under the Rules for Attorney Disciplinary Matters).

Such “good cause” undoubtedly exists here. The New York Court of Appeals has observed that Judiciary Law § 90

serves the purpose of safeguarding information that a potential complainant may regard as private or confidential and thereby removes a possible disincentive to the filing of complaints of professional misconduct. The State’s policy also evinces a sensitivity to the possibility of irreparable harm to a professional’s

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election and, after the votes were cast, to overturn its legitimate results” and that “[b]ased on these complaints, and the statement Mr. Giuliani uttered shortly before the attack on the Capitol, NYSBA President Scott M. Karson has launched an inquiry pursuant to the Association’s bylaws to determine whether Mr. Giuliani should be removed from the membership rolls of the Association.” Susan DeSantis, *New York State Bar Association Launches Historic Inquiry Into Removing Trump Attorney Rudy Giuliani From Its Membership*, NYSBA Latest News, <https://perma.cc/78YF-EQTK>. This request pertains to all disciplinary proceedings against Mr. Giuliani based on any and all ethics complaints filed with the Grievance Committee.

<sup>3</sup> Specifically, the LDAD Complaint alleges violations of New York Rules of Professional Conduct 3.1, 4.1, 4.4(a), 8.4(c), and 8.4(h), and the Miller Complaint alleges violations of New York Rules of Professional Conduct 3.1, 3.3(a)(1), 4.1, 8.4(b)–(d), and 8.4(h). *See* New York City Bar Association Statement at 5–6.

reputation resulting from unfounded accusations . . . . Indeed, . . . professional reputation “once lost, is not easily restored.”

*Matter of Johnson Newspaper Corp. v. Melino*, 564 N.E.2d 1046, 1051 (N.Y. 1990) (quoting *People ex rel. Karlin v. Culkin*, 162 N.E. 487, 492 (N.Y. 1928)); see also *Matter of Aretakis*, 791 N.Y.S.2d 687, 688 (N.Y. App. Div. 2005) (“[T]he confidentiality provisions of Judiciary Law § 90(10) serve the dual purpose of encouraging complainants to come forward and safeguarding a professional’s reputation.”).

These stated concerns about confidentiality simply do not apply to proceedings related to the above-detailed ethics complaints, and any similar ones, lodged against Mr. Giuliani. Both LDAD and Mr. Miller publicly announced the filing of their ethics complaints;<sup>4</sup> as such, the goal of “encouraging complainants to come forward,” *Matter of Aretakis*, 791 N.Y.S.2d at 688, will not be thwarted by permitting public access to these proceedings. Further, the complaints against Mr. Giuliani are based entirely on statements he made in public and in open court. See, e.g., LDAD Complaint at 2–7; Miller Complaint at 3–9. In other words, as in *Matter of Aretakis*, 791 N.Y.S.2d 687, 688 (N.Y. App. Div. 2005), “the matters referred to in [LDAD’s] complaint[] had to do with public statements already made by [Mr. Giuliani] and, thus, were already part of the public domain.” Thus, any ongoing disciplinary proceedings will not touch on private matters out of the public record, and any potential harm to Mr. Giuliani’s professional reputation has already been done.

Press and public access to the proceedings, on the other hand, is particularly important given the public’s intense interest in the November 2020 election and its aftermath. Mr. Giuliani engaged in a far-reaching campaign to challenge the outcome of the November 2020 election of the United States President. Further, Mr. Giuliani’s January 6 speech at the Ellipse was identified by House Managers in the second impeachment trial of President Trump as a key event leading to the insurrection at the U.S. Capitol. See Impeachment of President Donald J. Trump, Trial Memorandum of the United States House of Representatives 20 (Feb. 2, 2021), <https://perma.cc/W3TC-HFNK> (quoting President Trump, who “praised Giuliani, saying ‘he’s got guts, he fights.’”). Members of the public maintain an ongoing interest in access to any disciplinary proceedings against Mr. Giuliani stemming from these actions. See, e.g., Melissa Heelan, *Complaint Against Giuliani Cites Duty to Report Ethical Breach*, Bloomberg Law (Jan. 21, 2021), <https://perma.cc/47A9-FEKJ>; Alison Durkee, *Ethics Complaint Against Rudy Giuliani Seeks To Disbar Him In New York*, Forbes (Jan. 21, 2021), <https://perma.cc/JD7X-JJPG>; Maggie Jo Buchanan, *The case for disbaring Rudy Giuliani, other Trump lawyers—and even some lawmakers*, Fortune (Jan. 14, 2021), <https://perma.cc/32HM-BN3P>.

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<sup>4</sup> See David Thomas, *Giuliani hit with another disciplinary complaint over false claims, rhetoric*, Reuters Legal (Jan. 22, 2021), <https://perma.cc/Z3GG-RNZC> (quoting Mr. Miller confirming the filing of the ethics complaint and commenting, on the record, that “[w]e believe Mr. Giuliani egregiously violated several rules of professional conduct.”).

As in the 1985 proceedings of the Grievance Committee against Mr. Roy M. Cohn, “good cause to disclose the record of a disciplinary proceeding, if it is ever to be found to exist, exists in the matter at bar.” *In re New York News, Inc.*, 495 N.Y.S.2d 181, 183 (N.Y. App. Div. 1985); *see also* N.Y. Judiciary Law § 90(10). The Reporters Committee and 32 signatories, below, therefore respectfully request that the Grievance Committee make all papers, records, and documents from any and all disciplinary proceedings against Mr. Giuliani publicly available.

Respectfully submitted,

/s/ Katie Townsend

Katie Townsend

ktownsend@rcfp.org

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Washington, D.C. 20005

202.795.9300

On behalf of:

The Reporters Committee for Freedom of the Press

ALM Media, LLC

American Broadcasting Companies, Inc.

The Associated Press

BuzzFeed

Cable News Network, Inc.

The Center for Investigative Reporting  
(d/b/a Reveal)

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Society of Environmental Journalists

Society of Professional Journalists

Tully Center for Free Speech

The Washington Post

cc: Robert Costello, Esq.

Counsel to Rudolph W. Giuliani