PATRICK & MALONE
ASSOCIATES

February 25, 2021

***Via* email to: odcinfo@dcodc.org**

Hamilton P. Fox, III
Office of Disciplinary Counsel
District of Columbia Court of Appeals
515 5th Street, NW
Building A, Suite 117
Washington, DC 20001

In re: Ethics complaint to D.C. Bar Disciplinary Counsel *re "Kraken" lawsuits*

Julia Z. Haller, DC Bar No. 466921
and Brandon Johnson, DC Bar No. 491370

Dear Mr. Fox:

I bring this complaint as a longtime member of the D.C. Bar to seek sanctions against two members of the D.C. Bar, Julia Z. Haller and Brandon Johnson, for presenting a series of frivolous election-related lawsuits in United States District Courts in Arizona, Georgia, Michigan, and Wisconsin. The lawsuits alleged a vast international conspiracy to steal the 2020 presidential election.

Attorneys Haller and Johnson's conduct in presenting[1] these lawsuits seriously violated the Rules of Professional Conduct; specifically Rule 3.1 and 8.4(d). The presentation of these frivolous cases has had and will continue to have enduring corrosive effect on the public view of the legal profession, the ethical use of the judicial system, and the integrity of United States election processes. Attorneys Haller and Johnson also presented the *Gohmert v. Pence* case, a subsequent action of a different nature, in the United States District Court for the Eastern District of Texas. I have made a separate complaint to your office about Attorneys Haller, Johnson, and another D.C. Bar member's involvement in that case.

The conduct addressed herein arises from the allegations presented in the Arizona, Georgia, Michigan, and Wisconsin lawsuits, and is appropriate for sanction here in the District of Columbia because Attorneys Haller and Johnson listed D.C. Bar membership on their pleadings. While the attorneys' conduct is of course also sanctionable in the courts where the proceedings were brought, that does not take away from the appropriateness of sanctions here in the District of Columbia. Our D.C. Bar, with over 100,000 members, is the largest unified bar in the United

[1] I use the term "presenting" to mean the same as that word in Rule 11(b) of the Federal and Superior Court Rules of Civil Procedure, which states "By presenting to the court a pleading, written motion, or other paper, including an electronic filing—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies…"

1310 L Street, N.W. • Suite 800
Washington, D.C. 20005
202-742-1500 • 202-742-1515 fax
www.patrickmalonelaw.com

Patrick A. Malone
Daniel C. Scialpi
Alfred A. Clarke

States. The D.C. Bar is uniquely appropriate to consider these ethical violations because it is the Bar at the seat of our national government. By presenting these cases and the *Gohmert* case, these attorneys attacked the very legitimacy and integrity of our national government and the 2020 presidential election.

I believe I am required by the Rules of Professional Conduct to bring this to your attention. Rule 8.3(a) says:

> A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

The lawsuits that are the subject of this complaint include the following:

- *Bowyer et al. v. Ducey*, In the United States District Court for the District of Arizona, Case 2:20-cv-02321-DJH, filed December 2, 2020. The *Bowyer* Complaint was dismissed on December 9, 2020. --- F.Supp.3d ----, 2020 WL 7238261 (D. Ariz. 2020).

  An Appeal to the Ninth Circuit Court of Appeals on December 10, 2020, and while that appeal was still pending, a Writ of Mandamus was filed with the United States Supreme Court on December 24, 2020 and has been distributed for Conference of February 26, 2021. All respondents waived the right to reply to the Writ. *See, Supreme Court Docket* at https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/20-858.html

- *Pearson v. Kemp*, In the United States District Court for the Northern District of Georgia, Case 1:20-cv-04809-TCB, filed November 25, 2020.[2] While the action was still pending in the U.S. District Court, an Appeal was filed, and on December 4, 2020 was dismissed for lack of appellate jurisdiction.

  A Petition for Writ of Mandamus was filed with the Supreme Court on December 11, 2020. *See, Emergency Petition Under Rule 20 for Extraordinary Writ of Mandamus*,

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[2] Attorney Haller presented this lawsuit and the other three, but Attorney Johnson did not participate in the Georgia case. In the complaint in *Pearson v. Kemp*, attorney Haller did not list her D.C. Bar Number in the signature box. In later pleadings in the trial court proceedings, she did list it. Further, while Attorney Haller's name does not appear on the Notice of Appeal, she did participate in the presentation of the Petition for Writ of Certiorari to the Supreme Court.

Supreme Court Docket, at https://www.supremecourt.gov/DocketPDF/20/20-816/163613/20201211160936274_Final%20Ga.%20Brief%20Booklet%20Size.pdf. The Petition was dismissed, pursuant to Rule 46.1, on February 11, 2021. *See, Supreme Court Docket* at https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/20-816.html (*Order pending*).

- *King v. Whitmer*, In the United States for the Eastern District of Michigan, Case No. 20-cv-13134, filed November 25, 2020. The temporary and permanent injunctive relief sought in the *King* Complaint was denied by Memorandum Opinion and Order on December 7, 2020. *See*, --- F.Supp.3d ----2020 WL 7134198 (E.D. Mich. 2020). A Notice of Appeal to the Sixth Circuit Court of Appeals was filed on December 8, 2020 and has not yet been briefed or ruled on.

  Notwithstanding the filing of the Notice of Appeal, a Petition for Writ of Certiorari from the District Court denial of injunctive relief was filed on December 11, 2020. *See, Emergency Petition Under Rule 20 for Extraordinary Writ of Mandamus, Supreme Court Docket*, at https://www.supremecourt.gov/DocketPDF/20/20-815/163621/20201211163936285_Petition%20Michigan%20.pdf. The Supreme Court denied cert. on February 22, 2021. *See*, --- S.Ct. ----, 2021 WL 666797 (2021).

- *Feehan v. Wisconsin Elections Commission*, In the United States District Court for the Eastern District of Wisconsin, Case No. 2:20-cv-1771, filed December 2, 2020. The Complaint was dismissed by Memorandum Opinion and Order on December 9, 2020. *See*, --- F.Supp.3d ----, 2020 WL 7250219 (E. D. Wisc. 2020). A Notice of Appeal to the Seventh Circuit, to which Attorneys Haller and Johnson were not signatories, was filed on December 10, 2020.

  However, both Attorneys Haller and Johnson were listed as "of counsel" presenting the Emergency Petition for Writ of Mandamus to the United States Supreme Court on December 15, 2020. *See, Supreme Court Docket* at https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/20-859.html. The Writ has been distributed for Conference of February 26, 2021. *Id.*

I attach relevant pleadings presented by the respondents in these cases as follows:

- *Bowyer et al. v. Ducey* Complaint ("Arizona Complaint") (Exhibit 1) and Motion for Temporary Restraining Order and Preliminary Injunction (Exhibit 2)

- *Bowyer et al. v. Ducey* Memorandum Opinion and Order of Dismissal, Honorable Diane J. Humetewa, United States District Judge, December 9, 2020 (Exhibit 3)

- *Pearson v. Kemp* Complaint ("Georgia Complaint") (Exhibit 4)
- *King v. Whitmer* Complaint ("Michigan Complaint") (Exhibit 5)
- *King v. Whitmer* Memorandum Opinion and Order Denying TRO, Honorable Linda V. Parker U.S. District Judge, December 7, 2020 (Exhibit 6)
- *Feehan v. Wisconsin Elections Commission* Complaint ("Wisconsin Complaint") (Exhibit 7)
- *Feehan v. Wisconsin Elections Commission* Memorandum Opinion and Order of Dismissal, Honorable Pamela Pepper, Chief United States District Judge, December 9, 2020 (Exhibit 8)

I also attach as Exhibit 9, a "screenshot" comparison of some of the factual allegations in Pearson v. Kemp (used solely as an exemplar; substantially the same allegations appear in the Bowyer, King and Feehan complaints) about the Dominion voting machine company with a rebuttal which Dominion made in a lawsuit that it filed against Ms. Powell in the U.S. District Court for the District of Columbia. The complete complaint filed by Dominion in that case is attached as Exhibit 10.

Legal standard

District of Columbia Rule 3.1 was discussed authoritatively most recently by the D.C. Court of Appeals in *In re Pearson*, 228 A.3d 417 (D.C. 2020), in which the court observed at 423-24:

> Rule 3.1 provides that "[a] lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good-faith argument for an extension, modification, or reversal of existing law." In determining whether Rule 3.1 has been violated, "consideration should be given to the clarity or ambiguity of the law." In re Spikes, 881 A.2d 1118, 1125 (D.C. 2005). The "plausibility of the position taken [ ] and the complexity of the issue" are also relevant factors. Id. Ultimately, a position "is frivolous when it is wholly lacking in substance and not based upon even a faint hope of success on the legal merits." Id. (internal quotation marks omitted).
>
> Attorneys have a continuing responsibility to make an "objective appraisal of the legal merits of a position," asking how a "reasonable attorney" would evaluate "whether a claim is truly meritless or merely weak." In re Yelverton, 105 A.3d 413, 425 (D.C. 2014). "The distinction between a weak claim and a frivolous or meritless one can be difficult to pinpoint, and in making that determination under

the ethical rules we have relied on cases applying Superior Court Civil Rule 11 and our Rule 38." Id. at 424.

Superior Court Civil Rule 11, which is identical to Fed. R. Civ. P. 11, in relevant part states:

> (b) REPRESENTATIONS TO THE COURT. By presenting to the court a pleading, written motion, or other paper, including an electronic filing—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
>
> (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
>
> (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; ...

The legal standards of Rule 8.4(d) are also discussed in the *In re Pearson* case, where the court said at 426:

> Rule 8.4(d) states that "[i]t is professional misconduct for a lawyer to ... [e]ngage in conduct that seriously interferes with the administration of justice." A violation requires improper conduct that "bear[s] directly upon the judicial process ... with respect to an identifiable case or tribunal" and "taint[s] the judicial process in more than a de minimis way." See *In re Hopkins*, 677 A.2d 55, 59–61 (D.C. 1996). "[T]he purpose of Rule 8.4 is not to safeguard against harm to the client from the attorney's incompetence or failure to advocate. Rather it is to address the harm that results to the 'administration of justice' more generally." Yelverton, 105 A.3d at 427. Rule 8.4(d) seeks to protect both litigants and the courts from unnecessary "legal entanglement." *Id.*

Basis for sanctions by D.C. Bar

Attorneys Haller and Johnson, who used their D.C. Bar membership to present these four cases[3] in the federal court system, violated Professional Conduct Rules 3.1 and 8.4(d) in multiple ways.

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[3] As noted above, Ms. Haller appeared in all four cases. Mr. Johnson appeared in three of the four, but not Georgia.

These four cases were variations of the notorious "Kraken" cases, so named in numerous media appearances by lead plaintiff counsel, Sidney Powell, a member of the Texas Bar and apparently not subject to D.C. Bar discipline. Attorneys Haller and Johnson list their address in these cases as a location in Dallas TX that appears to be the same as Ms. Powell's. (In the *Gohmert* case, they use a District of Columbia address with a law firm they identify as "Defending the Republic," which appears to be an entity controlled by Ms. Powell.)

According to almost identical language in the Kraken complaints, election officials in the four states had engaged in "massive election fraud" and a "scheme and artifice to defraud was for the purpose of illegally and fraudulently manipulating the vote count to elect Joe Biden as President of the United States." *See Exhibit 1,* Arizona Complaint ¶¶ -1 – 2; *Exhibit 4,* Georgia Complaint, Introduction, and ¶ 2; *Exhibit 5*, Michigan Complaint, ¶¶ -1 – 2; and *Exhibit 7*, Wisconsin Complaint, ¶¶ -1 – 2. Each Complaint includes paragraphs of allegations positing that a wide range of actors all conspired together to steal the presidential election.

Here are screenshots sampling parts of the opening salvos of these complaints, which set the tone for their wild accusations and the bold result they asked for, to overturn the official election results in each of these states:

Arizona:

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NATURE OF THE ACTION

1. This civil action brings to light a massive election fraud, of the Election and Electors Clauses, and the Equal Protection and Due Process Clauses of the Fourteenth Amendment, of the U.S. Constitution and multiple violations of the Arizona election laws. These violations occurred during the 2020 General Election throughout the State of Arizona, as set forth in the affidavits of eyewitnesses and the voter data cited, the statistical anomalies and mathematical impossibilities detailed in the affidavits of expert witnesses.

2. The scheme and artifice to defraud was for the purpose of illegally and fraudulently manipulating the vote count to manufacture an election of Joe Biden as President of the United States, and also of various down ballot democrat candidates in the 2020 election cycle. The fraud was executed by many means, but the most fundamentally troubling, insidious, and egregious ploy was the systemic adaptation of old-fashioned "ballot-stuffing." It has now been amplified and rendered virtually invisible by computer software created and run by domestic and foreign actors for that very purpose. This Complaint details an especially egregious range of conduct in Maricopa County and other Arizona counties using employing Dominion Systems, though this conduct occurred throughout the State at the direction of Arizona state election officials.

Georgia:

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2.

The scheme and artifice to defraud was for the purpose of illegally and fraudulently manipulating the vote count to make certain the election of Joe Biden as President of the United States.

3.

The fraud was executed by many means,[2] but the most fundamentally troubling, insidious, and egregious is the systemic adaptation of old-fashioned "ballot-stuffing." It has now been amplified and rendered virtually invisible by computer software created and run by domestic and foreign actors for that very purpose. Mathematical and statistical anomalies rising to the level of impossibilities, as shown by affidavits of multiple witnesses, documentation, and expert testimony evince this scheme across the state of Georgia.

Michigan: (First Amended Complaint)

NATURE OF THE ACTION

1. This civil action brings to light a massive election fraud, multiple violations of the Michigan Election Code, *see, e.g.,* MCL §§ 168.730-738, in addition to the Election and Electors Clauses and Equal Protection Clause of the U.S. Constitution. These violations occurred during the 2020 General Election throughout the State of Michigan, as set forth in the affidavits of dozens of eyewitnesses and the statistical anomalies and mathematical impossibilities detailed in the affidavits of expert witnesses.

2. The scheme and artifice to defraud was for the purpose of illegally and fraudulently manipulating the vote count to elect Joe Biden as President of the United States. The fraud was executed through a wide-ranging interstate - and international - collaboration involving multiple public and private actors,[1] but at bottom it was a 21st Century adaptation of 19th Century "ballot-stuffing" for the Internet age, amplified and rendered virtually invisible by computer software created and run by domestic and foreign actors for that very purpose.

Wisconsin: (amended complaint)

4. The multifaceted schemes and artifices implemented by Defendants and their collaborators to defraud resulted in the unlawful counting, or fabrication, of hundreds of thousands of illegal, ineligible, duplicate or purely fictitious ballots in the State of Wisconsin, that collectively

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add up to multiples of Biden's purported lead in the State of 20,565 votes.

5. While this Amended Complaint, and the eyewitness and expert testimony incorporated herein, identify with specificity sufficient ballots required to set aside the 2020 General Election results, the entire process is so riddled with fraud, illegality, and statistical impossibility that this Court, and Wisconsin's voters, courts, and legislators, cannot rely on, or certify, any numbers resulting from this election. Accordingly, this Court must set aside the results of the 2020 General Election and grant the declaratory and injunctive relief requested herein.

In this complaint, I focus on only two aspects of Rule 11's attorney certification requirement (although other aspects of the Rule may also have been violated):

- That the pleading's "factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery;" Rule 11(b)(3);
- That the pleading "is not being presented for any improper purpose…" Rule 11(b)(1).

Rule 11's evidentiary support requirement

These attorneys' allegations of an international conspiracy were absurd on their face, were rebutted point by point by the election officials in those states, and by the private actors including Dominion who were the subject of the allegations. These cases were eventually dismissed by every trial judge, and appeals were rejected in those cases which had not already been withdrawn.

The outlandish nature of the allegations found succinct characterization in the Memorandum Opinions and Orders dismissing the actions. An Arizona federal judge wrote:

> Not only have Plaintiffs failed to provide the Court with factual support for their extraordinary claims, but they have wholly failed to establish that they have standing for the Court to consider them. Allegations that find favor in the public sphere of gossip and innuendo cannot be a substitute for earnest pleadings and procedure in federal court. They most certainly cannot be the basis for upending Arizona's 2020 General Election. The Court is left with no alternative but to dismiss this matter in its entirety. Accordingly, ... IT IS FINALLY ORDERED that this matter is dismissed.

See Exhibit 3, Bowyer et al. v. Ducey Memorandum Opinion and Order of Dismissal, Honorable Diane J. Humetewa, United States District Judge, --- F.Supp.3d ----, 2020 WL 7238261, at *16 (D. Ariz. 2020).

The Denial of the relief sought in the Michigan Complaint was based on similarly direct language, and opens with the following:

> The right to vote is among the most sacred rights of our democracy and, in turn, uniquely defines us as Americans. The struggle to achieve the right to vote is one that has been both hard fought and cherished throughout our country's history. Local, state, and federal elections give voice to this right through the ballot. And elections that count each vote celebrate and secure this cherished right.
>
> These principles are the bedrock of American democracy and are widely revered as being woven into the fabric of this country. In Michigan, more than 5.5 million citizens exercised the franchise either in person or by absentee ballot during the 2020 General Election. Those votes were counted and, as of November 23, 2020, certified by the Michigan Board of State Canvassers (also "State Board"). The Governor has sent the slate of Presidential Electors to the Archivist of the United States to confirm the votes for the successful candidate.

> Against this backdrop, Plaintiffs filed this lawsuit, bringing forth claims of widespread voter irregularities and fraud in the processing and tabulation of votes and absentee ballots. They seek relief that is stunning in its scope and breathtaking in its reach. If granted, the relief would disenfranchise the votes of the more than 5.5 million Michigan citizens who, with dignity, hope, and a promise of a voice, participated in the 2020 General Election. The Court declines to grant Plaintiffs this relief.

See, Exhibit 6, King v. Whitmer Memorandum Opinion and Order Denying TRO, Honorable Linda V. Parker U.S. District Judge, *See,* --- F.Supp.3d ----2020 WL 7134198, at *1 (E.D. Mich. 2020). Judge Parker closes the Opinion with a decisive conclusion.

> For these reasons, the Court finds that Plaintiffs are far from likely to succeed in this matter. In fact, this lawsuit seems to be less about achieving the relief Plaintiffs seek—as much of that relief is beyond the power of this Court— and more about the impact of their allegations on People's faith in the democratic process and their trust in our government. Plaintiffs ask this Court to ignore the orderly statutory scheme established to challenge elections and to ignore the will of millions of voters. This, the Court cannot, and will not, do.

Id. at *13.

The Wisconsin Complaint met a similarly swift demise in the trial court. The Honorable Pamela Pepper, Chief Judge of the United States District Court for the Eastern District of Wisconsin wrote in conclusion:

> This court's authority to grant relief is confined by the limits of the Constitution. Granting the relief the plaintiff requests would take the court far outside those limits, and outside the limits of its oath to uphold and defend the Constitution. The court will grant the defendants' motion to dismiss.

See Exhibit 8, Feehan v. Wisconsin Elections Commission Memorandum Opinion and Order of Dismissal, Honorable Pamela Pepper, Chief United States District Judge, --- F.Supp.3d ----, 2020 WL 7250219, at *18 (E. D. Wisc. 2020).

As noted above, Exhibit 9 to this complaint is a "screenshot" comparison of some of the factual allegations of an exemplar complaint, *Pearson v. Kemp,* with a rebuttal from the Dominion company. I offer this as only a "tip of the iceberg" insight into these four civil actions. The same allegations appear in the other three cases with some variations in paragraph number.

According to the Pearson complaint presented by Attorney Haller and her co-counsel:

Allegation: Dominion was "founded by foreign oligarchs and dictators to ensure computerized ballot-stuffing and vote manipulation to whatever level was needed to make certain Venezuelan dictator Hugo Chavez never lost another election." (Pearson complaint at ¶ 5)

Reality: Dominion was founded in Canada, later set up a subsidiary in Denver, Colorado, and never has had any business in Venezuela. (Dominion complaint at ¶¶. 29, 30, 96)

Allegation: The certificate issued by the Georgia Secretary of State for Dominion's voting machines in Georgia was undated (and thus suspect). (Pearson complaint at ¶12 and Exhibit 5)

Reality: The certificate was dated in August 2019 as shown on the Georgia Secretary of State's website. The undated version filed with the Pearson complaint was doctored to remove the certification, date and signature of the Secretary of State. (Dominion complaint at ¶ 91, side-by-side comparison)

Allegation: An unnamed "military intelligence expert" had analyzed Dominion's system and had concluded it "was accessed by agents acting on behalf of China and Iran…" (Pearson complaint at ¶¶ 14 and 11)

Reality: This "expert" had never worked in military intelligence and tried to retract the anonymous declaration submitted by the plaintiff lawyers in Pearson on his behalf. (Dominion complaint at ¶ 88)

Allegation: Dominion's system is designed to "not permit a simple audit to reveal its misallocation, redistribution, or deletion of votes." (Pearson complaint at ¶ 8)

Reality: Dominion's system was fully auditable, had been certified to meet the standards of the U.S. Election Assistance Commission (EAC), and had been proven through multiple audits and hand recounts in Georgia and elsewhere to have provided accurate and honest election results. (Dominion complaint at ¶ 183)

Let me stress that this is not a matter of dueling complaints with the truth somewhere up in the air. Rather, we see wild sweeping accusations presented by the D.C. Bar members (Haller in all four cases, Johnson in Arizona, Michigan and Wisconsin) compared with easily

ascertainable factual reality on the other side. And the Kraken accusations were presented with no "on information and belief" hedging of any kind.

When presenting these four complaints, D.C. Bar members Haller and Johnson certified pursuant to Fed. R. Civ. P. 11(b)(3) that "the factual contentions have evidentiary support..." They did not even use the out offered by the next phrase in Rule 11(b)(3): "or, if specifically so identified, *will likely have evidentiary support after a reasonable opportunity* for further investigation or discovery..." (emphasis added.) In making these outlandish contentions with no qualifiers whatever, they violated Civil Procedure Rule 11 and thus Professional Conduct Rule 3.1.

The burden is now on these lawyers to come forward with facts, under oath, about what they did to satisfy Rule 11's requirement of "an inquiry reasonable under the circumstances" to ascertain the "evidentiary support" for their factual allegations in these four lawsuits. And it is a burden that does not end on the eve of the filing of their complaints in November and December 2020. They continued to pursue these cases to the bitter end of defeat in the Supreme Court of the United States, which did not happen in some of these cases until February 2021. So they should be required to show the evidentiary and legal basis for their continued pursuit of these cases throughout the cases' path through the federal judicial system.

Rule 11's no improper purpose requirement

Another important part of Rule 11's certification is this: "an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) it is not being presented for any improper purpose..." Rule 11(b)(1).

There is an interplay between the "evidentiary support" requirement of the Rule and the "improper purpose" requirement. If these attorneys believed, based upon some investigation reasonable under the circumstances, that they had evidentiary support, then they were entitled to present these lawsuits no matter how extreme their allegations of a rigged or stolen election were. As noted above, no reasonable attorney could have believed in the truth of such assertions given the complete lack of evidence and their extreme nature.

But they presented these lawsuits anyway, and as noted above, pursued them to the bitter end. So the question is why? What could have been the "proper purpose" required by Rule 11? Certainly an improper purpose comes readily to mind, and it underscores the appropriateness of this ethics complaint being pursued vigorously here in the District of Columbia.

I believe that investigation by D.C. Bar Disciplinary Counsel will determine that the purpose of these cases was to subvert the legitimate constitutional duty of the United States Congress, sitting in the District of Columbia, to fulfill its constitutional obligation to declare the

winner of the presidential election. That was a function carried out by Congress on January 6, 2021, only after an hours' long delay caused by the rioters who invaded the Capitol. And as pointed out in this complaint and my accompanying complaint about the Gohmert case, a straight line runs from these lawsuits to the rioters' actions.

Rule 8.4(d) Violation

As noted above, Rule 8.4(d) states that "[i]t is professional misconduct for a lawyer to ... [e]ngage in conduct that seriously interferes with the administration of justice." The rule focuses not on harm to any litigants but to the judicial process itself.

In presenting and pursuing the Gohmert case and the four Kraken cases, Attorneys Haller and Johnson also violated Rule 8.4(d).

As the D.C. Court of Appeals noted in *In re: Pearson*,

> Rule 8.4(d) states that "[i]t is professional misconduct for a lawyer to ... [e]ngage in conduct that seriously interferes with the administration of justice." A violation requires improper conduct that "bear[s] directly upon the judicial process ... with respect to an identifiable case or tribunal" and "taint[s] the judicial process in more than a de minimis way."

228 A.3d 417, at 426, *citing In re Hopkins*, 677 A.2d 55, 59–61 (D.C. 1996).

These Kraken lawsuits were more than frivolous; they were nothing less than an effort to use the courts of this country to attack and cannibalize the institutions that make this country a democracy and not an autocracy. The allegations, cloaked in the legitimacy of legal pleadings, were presented by members of the legal profession without basis and repeated in countless legal filings. This sweeping misuse of the judicial process has done incalculable damage to the image of our court system. Indeed, the dismissal of case after case has itself become fodder for conspiracy theories among those who presented the cases, and the public who was misled by them.

Despite their swift demise in the courts, these false and corrosive allegations garnered widespread news coverage by mainstream and other media. Those false allegations remain alive today in many Americans' minds, and have caused lasting damage to the faith of the citizenry in the integrity of the election process. Attorneys Haller and Johnson, and other D.C.-based lawyers who sponsored these allegations are among those most responsible for this damage, and thus should face ethical consequences for their reckless and unethical misbehavior.

These four cases and their fanciful allegations provide the unfortunate backdrop for a fifth case, *Gohmert v. Pence*, presented by Attorneys Haller and Johnson, and other attorneys in

the United States District Court for the Eastern District of Texas. It was different from the other four but equally frivolous and damaging to the judicial and election processes in that it referred to "massive multi-state electoral fraud" yet told the court that it need not decide such allegations. Thus, the baseless complaints became the basis and critical backdrop for the equally baseless final action to try to use the judicial system to subvert the 2020 election. (See my separate complaint to your office about the D.C. Bar members involved in the *Gohmert* case.)

Indeed, a direct line can be traced from all these lawsuits to the mob attacks on the U.S. Capitol on January 6, 2021. The rioters asserted that the election had been stolen, just as these attorneys assert it was stolen in these four cases in which they appeared as members of the D.C. Bar. And the rioters roamed the Capitol building shouting "hang Mike Pence" because the Vice President did not comply with the misplaced fanciful assertions of the *Gohmert* case brought by these same lawyers.

For these reasons, I respectfully request that the Office of Disciplinary Counsel investigate this matter, that the Board of Professional Responsibility hold one or more hearings as appropriate, and that these lawyers be sanctioned for these serious violations of the D.C. Rules of Professional Conduct.

Sincerely,

Patrick A. Malone

PAM:scc
Enclosures:
Exhibit 1. Arizona Complaint, *Bowyer et al. v. Ducey*
Exhibit 2. Motion for Temporary Restraining Order and Preliminary Injunction
Exhibit 3. Memorandum Opinion and Order of Dismissal, Honorable Diane J. Humetewa
Exhibit 4. Georgia Complaint, *Pearson v. Kemp*
Exhibit 5. Michigan Complaint, *King v. Whitmer*
Exhibit 6. Memorandum Opinion and Order Denying TRO, Honorable Linda V. Parker
Exhibit 7. Wisconsin Complaint, *Feehan v. Wisconsin Elections Commission*
Exhibit 8. Memorandum Opinion and Order of Dismissal, Honorable Pamela Pepper
Exhibit 9. "screenshot" comparison of some of the factual allegations in Pearson v. Kemp
Exhibit 10. Dominion Complaint