

# Giuliani's rendezvous with justice



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Guest columnist

**R**udy Giuliani, “America’s Mayor” after 9/11, has been suspended from the practice of law. Other lawyers who attempted in court to promote former President Trump’s assertion that the 2020 election was stolen from him are facing similar discipline. How did Giuliani’s discipline happen and why?

The short answer is attorneys can be disciplined for not being truthful with courts, not following court rules or for other misconduct even outside of court. Let me explain how it works.

Start with the 94 U.S. federal trial courts (U.S. District Courts) throughout the country. They are all governed by the Federal Rules of Civil Procedure adopted and routinely updated by the Supreme Court of the United States. The far more numerous state courts have similar rules.

Among them is Rule 11. It provides that a lawyer who signs or files a court pleading or motion, or advocates a position in court, implicitly certifies, after inquiry reasonable under the circumstances, that his conduct is not for any improper purpose (such as to harass, cause



Former N.Y.C. Mayor Rudy Giuliani

unnecessary delay or needlessly increase the cost of litigation). He or she also implicitly certifies that any factual contentions have evidentiary support.

When an attorney files suit claiming there was fraud in the 2020 election, and bases that claim solely on “someone told me” or “I saw it on the internet,” that violates Rule 11.

The rule imposes penalties. The cost of the opposing side’s reasonable attorneys’ fees and expenses is the most frequent, and they can be imposed jointly on the offending attorneys, their law firm and the litigant they represent.

The rule is designed to deter the lawyer from such conduct in the future and to deter other lawyers similarly situated. Most important, a misrepresentation may result in the dismissal of the lawsuit if there is nothing additional to the unsupported evidence.

But that’s not all lawyers have to comply with. They belong to the most highly regulated of professions, and rightly so. They can be admitted to a state’s Bar only upon a written examination, and to another court or state only after appropriate time and experience. They become sworn officers of the court. Each state has Rules of Professional Conduct that its attorneys must follow. They are similar throughout the nation.

Among these rules is one that says a lawyer shall not bring or defend a proceeding or issue unless there is a basis in law and fact for doing so that is not frivolous. Another recites that a lawyer shall not knowingly make a false statement of fact or law to a tribunal. Neither may a lawyer engage in conduct that seriously interferes with the administration of justice.

In addition, it is professional malfeasance for an attorney to engage in any conduct — even outside court or the practice of law — involving dishonesty, fraud, deceit or misrepresentation. A lawyer can be disbarred for failing to file returns and pay income taxes, for example.

A complaint can be made by a court, a lawyer, a litigant or anyone else, or can be initiated by a Bar disciplinary office on its own. Discipline in one state usually results in comparable discipline in all the other state Bars to which the attorney has

been admitted. If the conduct is egregious it can result in suspension of the right to practice law pending a final evidentiary determination.

Thus, Giuliani was suspended pending further disciplinary proceedings in New York state, and because of that he was similarly suspended elsewhere. He admitted to a New York judge he did not investigate the election fraud he claimed existed; he made no inquiry about it reasonable under the circumstances; his factual contentions had no evidentiary support; he made them repeatedly; and it took up the valuable time of the court, thus delaying justice for other litigants.

The disciplinary process is meticulous and slow. After all, it can deprive a lawyer of his or her livelihood. Usually there is a fact-finding hearing before a Bar committee; its discipline imposed, if any, must be legally approved or modified (usually after further briefing) by the state’s disciplinary authority; and, finally, it must be approved (after even more briefing and argument) by the relevant court.

We’ll see how it all turns out, for the now-suspended Giuliani and others.

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