VIA EMAIL

Thomas M. DeGonia
Bar Counsel
Maryland Attorney Grievance Commission
200 Harry S. Truman Parkway, Suite 300
Annapolis, MD 21401

Re: Attorney Kurt Olsen, Maryland Bar No. 9212160274

Dear Mr. DeGonia:

The States United Democracy Center ("**SUDC**") is a nonpartisan organization advancing free, fair, and secure elections. We connect state and local officials, public-safety leaders, and pro-democracy partners across America with the tools and expertise they need to safeguard our democracy. In addition, we work to ensure that people engaged in efforts to subvert democracy are held accountable, including lawyers who betray their professional responsibilities as officers of the legal system.

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 assaults on fundamental principles of our American democracy.

I. Introduction

SUDC and LDAD hereby submit this Grievance, together with the attached exhibits, against Maryland attorney Kurt Olsen ("**Olsen**"). This Complaint describes an ongoing pattern of unethical conduct, which indicates indifference to legal obligation and warrants serious investigation and discipline. *See* Maryland Attorneys' Rules of Professional Conduct Rule 8.4, cmt. 2 ("A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.").

Olsen has already been the subject of at least two Maryland grievances arising from his participation in and filing of lawsuits containing false, misleading and dishonest allegations about the 2020 and 2022 elections, namely *Texas v. Pennsylvania,* filed in the United States Supreme Court, and, *Lake v. Hobbs I*

and *II*, filed in Arizona.[1] Olsen is also currently the subject of disciplinary proceedings in Arizona based on the conduct for which he was sanctioned in *Lake v. Hobbs I* and *II*. However, according to the Arizona State Bar, "because Olsen is licensed to practice law in Maryland, and was admitted to practice in Arizona only in these specific cases, the harshest possible punishment he faces is a formal reprimand."[2]

Undeterred by these filings and proceedings, as described below, Olsen has continued to engage in professional misconduct, making court filings that seek to undermine confidence in our election infrastructure and our democracy more broadly, based on false, misleading and dishonest allegations.

This Grievance provides new evidence to supplement prior grievances filed against Olsen[3] and describes Olsen's ongoing misconduct—misconduct which violates, *at least*, rules 3.1, 3.3(a)(1), 8.4(c) and 8.4(d), *see* § V, *infra*, and requires accountability to protect the integrity of the profession and the public.

II. New Evidence Concerning Falsehoods in *Texas v. Pennsylvania* Complaint

In December 2020, the State of Texas filed *Texas v. Pennsylvania,* a lawsuit seeking to overturn the 2020 election results and to disenfranchise millions of voters in multiple states. Olsen was one of the lawsuit's primary drafters.[4] The lawsuit was patently inappropriate, asking the Supreme Court to throw

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[1] Michael Teter, *Ethics Complaint Against Kurt Olsen*, The 65 Project (Aug. 4, 2022), available at: https://the65project.com/ethics-complaint-against-kurt-olsen/. Michael Teter, *Ethics Complaint Against Kurt B. Olsen,* The 65 Project (Feb. 15, 2023), available at: https://the65project.com/ethics-complaint-against-kurt-b-olsen/. The Aug. 2022 Grievance also alleged Olsen engaged in misconduct by filing a frivolous lawsuit against Dominion Voting on behalf of eight individuals who received cease and desist and document preservation letters from the company. Aug. 4, 2022 Grievance at 9. More than a year later, a panel of the Tenth Circuit agreed, affirming the trial court's dismissal of the lawsuit, and further stating, in pertinent part, "Plaintiffs' claims are 'legally frivolous,'" and based on "patently frivolous state-action allegations[.]" *Cooper v. US Dominion, Inc*., No. 22-1361, 2023 WL 8613526, at *7 (10th Cir., Dec. 13, 2023) (citing *Initiative & Referendum Institute v. Walker*, 450 F.3d 1082, 1093 (10th Cir. 2006) (*en banc*) ("a plaintiff whose claimed legal right is so preposterous as to be legally frivolous may lack standing on the ground that the right is not 'legally protected.'").

[2] Caitlin Sievers, *Lake lawyers await discipline for making false claims to AZ Supreme Court*, AZ Mirror (June 3, 2024), https://azmirror.com/2024/06/03/kari-lake-lawyers-await-discipline-for-making-false-claims-to-az-supreme-court/.

[3] In the interests of brevity and efficiency, this Complaint assumes familiarity with the key allegations against Olsen arising from his conduct in *Texas v. Pennsylvania* and *Lake I* and *Lake II* and restates the allegations only to the extent it is contextually helpful.

[4] *See* Ex. 3 (Sept. 29, 2023 Transcript) at 11:3-8 ("So I was one of two principal drafters of the complaint. I dealt primarily with the legal arguments in the fact section relating to state violations – or violations of state election law, the facts underpinning that, and the general circumstances at issue, and so I was one of two primary drafters of that complaint."). *See also id.* at 19, 23, 26, 31 (more sworn testimony by Olsen confirming his key role in drafting the Complaint); Reply in Support of Motion for Leave to File, *Texas v. Pennsylvania*, No. 22O155 (2020), available at: https://www.supremecourt.gov/DocketPDF/22/22O155/163497/20201211110907446_TX-v-State-LeaveReply-2020-12-11.pdf (Olsen listed as an attorney submitting the filing as "Special Counsel to the Attorney General of Texas"); Reply in Support of Motion for Preliminary Injunction and Temp. Rest. Order, *Texas v. Pennsylvania*, No. 22O155 (2020), available at:

out *all of the millions of votes* for president cast in the defendant states based on vague and unfounded claims of fraud and irregularities. *Texas v. Pennsylvania* Bill of Complaint ("**Complaint**"). As supposed justification for this outlandish request for relief, the Complaint asserted multiple false allegations, including, for example that there had been "outcome-determinative fraud" in the defendant states and that the odds of now-President Biden winning the election were "less than one in a quadrillion." Compl. at ¶¶ 10-11. It also misleadingly omitted any mention of prior court rulings that had already considered and dismissed claims of outcome-determinative irregularities affecting the 2020 presidential election. Several days after the filing of the Complaint, the Supreme Court denied Texas leave to file without addressing the merits.

Since the filing of the 2022 Maryland grievance filed against Olsen for his part in the *Texas v. Pennsylvania* litigation, the State Bar Court of California determined—after a 35-day trial—that multiple allegations in that Complaint were unsupported, false, misleading, and dishonest. Ex. 1 (Eastman Decision or "**Decision**") at 9-23; 81-86. As described in more detail below, the California Bar Court made its findings as part of a disciplinary proceeding against John Eastman, an attorney who filed a motion to intervene in the *Texas v. Pennsylvania* action, on behalf of candidate Trump, and with whom Olsen coordinated. *See* Ex. 3 (Sept. 29, 2023 Transcript) at 55-58; Ex. 4 (Oct. 6, 2023 Transcript) at 46. Olsen testified in the proceeding over the course of three days, and repeatedly confirmed that he was a primary author of the Complaint.[5]

As part of its disciplinary charges against Eastman, the California Office of Chief Trial Counsel ("**OCTC**") charged Eastman with willfully seeking to mislead the United States Supreme Court by expressly adopting and incorporating into a Dec. 7, 2020 intervention filing on behalf of candidate Trump, multiple false and misleading statements in the Complaint. *See* Ex. 2 (Notice of Disciplinary Charges) at 16-19. OCTC alleged this conduct violated California Business & Professions Code § 6068(d) – a close analog to Rule 3.3(a)(1) – which states it is the duty of an attorney "to employ…those means only as are consistent with truth, and *never to seek to mislead the judge…by an artifice or false statement of fact or law*." (emphasis added).

In its Decision, the State Bar Court concluded that Eastman, in adopting false statements in the Complaint, violated his duties to use truthful means and to never seek to mislead a judge. *See* Ex. 1 (Decision) at 11-13, 82-84, 127. Based on these and other findings concerning multiple ethical violations by Eastman, the Court recommended Eastman's disbarment. *Id.*

The Court made three key findings concerning the falsehoods in the Complaint:

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https://www.supremecourt.gov/DocketPDF/22/22O155/163498/20201211111125165_TX-v-State-MPI-Reply-2020-12-11.pdf (Olsen listed as an attorney submitting the filing as "Special Counsel to the Attorney General of Texas").

[5] *See generally* Ex. 3 (Sept. 29, 2023 Transcript), Ex. 4 (Oct. 6, 2023 Transcript), and Ex. 5 (Oct. 17, 2023 Transcript). *See, in particular,* Ex. 3 (Sept. 29, 2023 Transcript) at 11:3-8 ("So I was one of two principal drafters of the complaint. I dealt primarily with the legal arguments in the fact section relating to state violations – or violations of state election law, the facts underpinning that, and the general circumstances at issue, and so I was one of two primary drafters of that complaint."), 35:2 & 66:23 – 67:12 (confirming he worked with expert to draft attached declaration); Ex. 4 (Oct. 6, 2023 Transcript) at 33:9-10 ("My role was drafting the responses to those oppositions.").

First, the Court found that the Complaint created a false impression that there had been outcome determinative fraud or misconduct in the 2020 presidential election, thereby violating the duty of candor to the tribunal. Specifically, the Court concluded that the Complaint's "allegation of 'outcome-determinative' voting irregularities was false and misleading" and further, that "the omission of relevant case decisions was misleading as it excluded vital information about prior court rulings rejecting the unfounded outcome-determinative claims—creating the false impression that such matters had not been considered and decided." Ex. 1 (Decision) at 11-13, 82-84. Ultimately, the Court concluded these allegations violated standards of professional responsibility, because "[a]ttorneys have a duty to provide courts with complete information, which includes prior adverse rulings, and to identify adverse authorities. This duty is part of an attorney's overarching ethical obligation to utilize methods that employ only such means as are consistent with the truth." Ex. 1 (Decision) at 83-84 (internal citation omitted).

Second, the Court found that the Complaint made material omissions in an effort to mislead the Supreme Court by failing to acknowledge rulings by other courts that undermined central contentions in the Complaint. For example, the Complaint alleged that state and local election officials in Pennsylvania "violated Pennsylvania's election code and adopted differential standards favoring voters in Philadelphia and Allegheny Counties with the intent to favor former Vice President Biden." Complaint at ¶ 52. But the Court found that not only was this claim unsupported, but that it omitted material facts that were or should have been known to Olsen and the other authors of the Complaint.[6] The Court explained, "[a]lthough Texas cited to its November 18, 2020 complaint in *Donald J. Trump for President, Inc. v. Boockvar* filing as support for some of these allegations, Texas did not reference the earlier Pennsylvania state and federal cases—all of which rejected those factual allegations outlined in the Bill of Complaint." Ex. 1 (Decision) at 13-16, 85-86. Ultimately, the Court concluded that failure to disclose these rulings, including a ruling by the Pennsylvania Supreme Court that its election laws had not been violated, was "strong evidence" of an intent to mislead the court. *Id.*

Third, the Court found the outlandish claim that the probability of now-President Biden winning the popular vote was "less than one in a quadrillion" was false and misrepresented the expert declaration upon which it was premised. Specifically, with respect to the Complaint's allegation that "the probability of former Vice President Biden winning the popular vote in the four Defendant States—Georgia, Michigan, Pennsylvania, and Wisconsin—independently given President Trump's early lead in those States as of 3 a.m. on November 4, 2020, is less than one in a quadrillion," the Court concluded it was false, citing, *inter alia*, disavowal of that claim by Texas's expert, Dr. Cicchetti, whose declaration was cited for support for this allegation. Ex. 1 (Decision) at 16-19, 86-87. Although the Court did not find, based on the evidence presented, that *Eastman* "was aware of the inaccuracy or falsehood of the statements" for purposes of finding an ethical violation, *see* Ex. 1 (Decision) at 87, *Olsen's* testimony concerning his primary drafting role and his work directly with Dr. Cicchetti strongly suggests *he* would or should have been. *See, e.g.,* Ex. 5 (Oct. 17, 2023 Transcript) at 41-56 (describing his drafting of the one in a quadrillion claim and Dr. Cicchetti's refutation that his affidavit supported that claim). *See also* Ex. 3 (Sept. 29, 2023 Transcript) at 35:2 and 66:23-67:12 (confirming his key role in working with Dr. Cicchetti to draft the declaration.)

[6] *See* Ex. 3 (Sept. 29, 2023 Transcript) at 28-29, 46-51 (describing Olsen's review of other relevant cases during the drafting of the Complaint).

III. Arizona Sanctions and Disciplinary Proceedings Arising from *Lake v. Hobbs I* and *II*

After the previous grievances were filed against Olsen, he made false statements to the Arizona Supreme Court in *Lake v. Hobbs, II*, as described more fully below. In 2022, Olsen was counsel of record in two lawsuits filed by failed Arizona gubernatorial candidate Kari Lake and failed secretary of state candidate Mark Finchem. Both lawsuits were unsuccessful, and Olsen was sanctioned in both cases for making false statements.

The first case, *Lake v. Hobbs I*, filed before the 2022 midterm election, sought to prohibit the use of electronic voting machines based on false and misleading claims about their reliability and accuracy. After the federal district court dismissed the complaint, it sanctioned Olsen on December 1, 2022 under Rule 11 and 28 U.S.C. § 1927. *See* Ex. 6 (Dec. 1, 2022 District Court Order). Specifically, it sanctioned Olsen for falsely alleging that Arizonans do not vote using paper ballots; falsely alleging that Arizona does not test tabulators; making assertions about the lack of security of Arizona's voting machines based on "speculation and conjecture"; and waiting seven weeks to seek injunctive relief in a case seeking a change to election equipment where the election was just four months away. *Id.* at 19. The sanctions ruling is currently on appeal before the Ninth Circuit.

The second case, *Lake v. Hobbs II*, filed after the 2022 midterm election, sought to contest the election results on the basis of false and misleading claims that, *inter alia*, "the number of illegal votes cast in Arizona's general election on November 8, 2022, far exceeds the 17,117-vote margin" by which Lake lost. As with *Lake I*, Olsen was sanctioned, this time by the Arizona Supreme Court, for making yet another false assertion. *See* Ex. 7 (May 4, 2023 Arizona Supreme Court Order). Specifically, the Arizona Supreme Court sanctioned Olsen for repeating in his petition that it was an "undisputed fact that 33,563 unaccounted for ballots were added to the total number of ballots at a third-party processing facility." *Id.* Because the "fact" was disputed, the Court said Olsen's claim that it was undisputed was "unequivocally false." *Id*.

Arizona Bar Counsel recently filed before the Presiding Disciplinary Judge there two formal Complaints against Olsen based on the conduct for which he was sanctioned by the Arizona District Court and the Arizona Supreme Court. *See* Ex. 8 (Formal Complaint 2024-9003) (re *Hobbs I*) & Ex. 9 (Formal Complaint 2024-9004) (re *Hobbs II*). Each Complaint alleges Olsen violated multiple Arizona Rules of Professional Conduct, including 1.3, 3.1, 3.3(a)(1), 8.4(c), and 8.4(d).

On April 30, 2024, the Presiding Disciplinary Judge granted summary judgment against Olsen in the *Hobbs II* disciplinary case, finding Olsen violated Arizona Rules of Professional Conduct 3.1, 3.3(a)(1), 8.4(c), and 8.4(d), by knowingly and falsely asserting "it was an "undisputed fact" that 35,563 ballots were added by the third-party processing facility[.]" *See* Ex. 10 (Order Granting Summary Judgment). As the Presiding Disciplinary Judge explained, this claim "was indisputably false, and Respondent knew it . . . Even after the Supreme Court placed Respondent on notice that this claim was 'unsupported by the record' and that sanctions were possible as a result, he continued to advance it." *Id.* at 4. A hearing to determine Olsen's sanction is set for July 9, 2024, although according to the Arizona State Bar, the

harshest possible punishment Olsen faces is a formal reprimand, since he is not a member of the Arizona Bar.[7]

IV. Olsen's Misconduct Continues

Notwithstanding the above-referenced sanctions and disciplinary proceedings, Olsen has continued to engage in misconduct, most recently in connection a Petition for Writ of Certiorari[8] ("Petition") and Petitioners' Motion to Expedite ("Motion to Expedite")[9] filed in the U.S. Supreme Court seeking review of the Ninth Circuit's decision in *Lake v. Hobbs I*.

The Petition included false and misleading allegations—one of which had been the basis of sanctions. Specifically:

1) The Petition falsely and misleadingly asserts that Arizona uses ballot marking devices (BMDs) to vote, rather than hand-marked paper ballots, stating "The Georgia BMD software that could be manipulated 'to steal votes' according to the Curling plaintiffs' expert is essentially what Maricopa uses." *See* Petition at 3. In fact, as Olsen knows and as the Arizona District Court explained below "the overwhelming majority of Arizona voters—99.8% of voters in the 2020 general elections in Maricopa County, for example—do not use BMDs to cast their votes." Ex. 6 (Dec. 1, 2022 District Court Order) at 11. They use hand-marked paper ballots.[10] This was among the claims for which the Arizona District Court sanctioned Olsen in 2022. Indeed, the District Court dedicated seven pages to thoroughly explaining the false and misleading nature of Olsen's allegations regarding use of paper ballots. *Id.* at 7-13. The Court's finding about Arizona's use of paper ballots was unequivocal: "In short, it cannot be disputed that Arizona already requires and uses paper ballots. Allegations to the contrary are simply false." *Id.* at 7. And the Court rejected the plaintiffs' argument that their assertions about paper ballots were not misleading, stating "[u]sing those broader terms allowed Plaintiffs to misleadingly analogize the machines used in Arizona to those used in other jurisdictions, including the machines at issue in the *Curling v. Raffensperger* case in the Northern District of Georgia" and "...the *Curling* case is nothing like this one, in part because Arizona, unlike Georgia, uses paper ballots." *Id.* at 10-11.

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[7] Caitlin Sievers, *Lake lawyers await discipline for making false claims to AZ Supreme Court*, AZ Mirror (June 3, 2024), https://azmirror.com/2024/06/03/kari-lake-lawyers-await-discipline-for-making-false-claims-to-az-supreme-court/.

[8] Petition for Writ of Certiorari, *Lake v. Fontes*, No. 23-1021 (2023), available at: https://www.supremecourt.gov/DocketPDF/23/23-1021/303129/20240314174416788_23-_PetitionForWritOfCertiorari.pdf.

[9] Petitioners' Motion to Expedite, *Lake v. Fontes*, No. 23-1021 (2023), available at: https://www.supremecourt.gov/DocketPDF/23/23-1021/303592/20240320211328102_Lake Mot to Expedite signed.pdf.

[10] One hundred percent of Arizonans "liv[e] in jurisdictions [that] us[e] Hand Marked Paper Ballots for most voters" whereas one hundred percent of Georgia voters "liv[e] in jurisdictions which us[e] Ballot Marking Devices for all voters." *See* Verified Voting, *The Verifier – Election Day Equipment – November 2024,* 2024, available at: https://verifiedvoting.org/verifier/#mode/navigate/map/ppEquip/mapType/normal/year/2024.

2) The Petition falsely states 217,000 ballots were rejected in Maricopa County on Nov. 8, 2022 due to machine errors, thereby falsely and misleadingly implying that 217,000 ballots were not counted. Petition at 11 ("Maricopa's vote center tabulators rejected 7,000 ballots every thirty minutes…totaling over 217,000 rejected ballot insertions[.]"). In fact, according to Maricopa County, only 16,724 ballots were rejected at voting locations, and they were all counted at the Elections Department."[11]

The Supreme Court denied the Petition on April 22, 2024.[12]

V. Request for Investigation and Discipline

Based on the conduct discussed above, Complainants respectfully request that the Maryland Attorney Grievance Commission promptly investigate whether Olsen should be charged with violating multiple Maryland Attorneys' Rules of Professional Conduct ("**MARPC**") or its applicable analogs under the Arizona and DC Rules of Professional Conduct ("**ARPC**" or "**DCRPC**") including, without limitation, the rules identified below.[13]

A. Olsen made numerous false and misleading claims and allegations across multiple cases and jurisdictions.

Olsen's myriad false and misleading allegations and claims before the United States Supreme Court in *Texas v. Pennsylvania*, before the Arizona federal and state courts in *Lake v. Hobbs I* and *Lake v. Hobbs*

[11] *See* Sudiksha Kochi, *Fact check: Kari Lake falsely claims that nearly 250,000 voting attempts failed in midterms*, USA Today (Feb. 3, 2023) ("Megan Gilbertson, a Maricopa County elections spokesperson, called the claim 'textbook disinformation.' She said the Maricopa County logs in question show how many times voters attempted to insert ballots into tabulators...The logs simply show the total number of times that ballots were run through tabulators in the November 2022 General Election[.]'…She said it's not unusual for a ballot to be rejected on the first try, for example, if the voter inserted it crooked. Gilbertson said 16,724 Election Day ballots were not able to be counted onsite at voting locations and were instead counted at the Elections Department. In some cases voters tried feeding their ballot a dozen or more times before the ballot was set aside to be counted separately."), https://www.usatoday.com/story/news/factcheck/2023/02/03/fact-check-false-claim-250-000-arizona-voting-attempts-failed/11169708002/. *See also* Caitlin Sievers, *Kari Lake and Mark Finchem appeal their tabulator case to the U.S. Supreme Court, AZ Mirror* (Mar. 15, 2024), https://azmirror.com/2024/03/15/kari-lake-and-mark-finchem-appeal-their-tabulator-case-to-the-u-s-supreme-court/.

[12] *Lake v. Fontes*, No. 23-1021, 2024 WL 1706042, at *1 (U.S. Apr. 22, 2024).

[13] MARPC 8.5(b), regarding choice of law, provides "In any exercise of the disciplinary authority of this jurisdiction, the Rules of Professional Conduct to be applied shall be as follows: (1) for conduct in connection with a matter pending before a tribunal, the rules to be applied shall be the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and (2) for any other conduct, the rules of the jurisdiction in which the attorney's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. An attorney shall not be subject to discipline if the attorney's conduct conforms to the rules of a jurisdiction in which the attorney reasonably believes the predominant effect of the attorney's conduct will occur." Although the Arizona Rules appear to apply to much of Olsen's conduct pursuant to MARPC 8.5(b), the relevant Maryland and DC Rules are almost all identical.

II and, most recently, again, before the United States Supreme Court in the Petition and Motion to Expedite reflect a pattern and practice of dishonest conduct that violates rules 3.1, 3.3(a)(1), 8.4(c) and 8.4(d).

- **Rule 3.1** provides that "[a] lawyer shall not...assert...an issue...unless there is a good faith basis in...fact for doing so that is not frivolous[.]."[14] Courts apply "an objective standard to assess whether a legal proceeding is frivolous, but a subjective standard to determine whether the lawyer acted in good faith." *In re Alexander*, 232 Ariz. 1, 5 (2013) (suspending attorney who maintained frivolous RICO lawsuit), citing *In re Levine*, 174 Ariz. 146, 153 (1993)). "A lawyer's motives and knowledge can be inferred from the frivolousness of a claim." *Alexander*, 232 Ariz. at 5 (citing *Levine*, 174 Ariz. at 154).

- **Rule 3.3(a)(1)** provides that "[a] lawyer shall not knowingly... make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer."[15] Rule 3.3(a)(1) "is based upon the idea that every court has the right to rely upon an attorney to assist it in ascertaining the truth of the case before it which imposes upon an attorney the obligation to be fully honest and forthright throughout litigation." *Att'y Griev. Comm'n v. Peters-Hamlin*, 447 Md. 520, 539 (2016) (cleaned up). Attorneys are "under an obligation not to mislead [a] court through an intentional omission." *Matter of Ireland*, 146 Ariz. 340, 342 (1985).

- **Rule 8.4(c)** provides "[i]t is professional misconduct for an attorney to engage in conduct involving dishonesty, fraud, deceit or misrepresentation."[16] Rule 8.4(c) "applies to a broad universe of misconduct." *Att'y Grievance Comm'n of Maryland v. Davis*, 486 Md. 116, 140 (2023) (internal quotations and citations omitted). "Simply making a false statement that an attorney knows to be untrue is enough to constitute conduct involving a misrepresentation and thus a violation of Rule 8.4(c)." *Id*. *See also In re Alcorn*, 202 Ariz. 62, 64 (2002), as corrected (Mar. 21, 2002) (failing to disclose a material fact was "tantamount to an affirmative misrepresentation" and violated 8.4(c)). "A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation." Rule 8.4, cmt. 2.

- **Rule 8.4(d)** provides that "[i]t is professional misconduct for an attorney to engage in conduct that is prejudicial to the administration of justice."[17] *Att'y Grievance Comm'n of Maryland v. Heung Sik Park*, 427 Md. 180, 190–91 (2012) (internal citations omitted) (holding "[c]onduct that reflects negatively on the legal profession and sets a bad example for the public at large is prejudicial to the administration of justice."). A violation of Rule 8.4(d) "does not require a

[14] MARPC 3.1, AZRPC 3.1, and DCRPC 3.1.

[15] MARPC 19-303.3(a)(1), AZRPC 3.3(a)(1), and DCRPC 3.3(a)(1).

[16] MARPC 19-308.4(c), AZRPC 8.4(c), and DCRPC 8.4(c).

[17] MARPC 19-308.4(d) and AZRPC 8.4(d). DCRPC 8.4(d) provides "[i]t is professional misconduct for a lawyer to engage in conduct that seriously interferes with the administration of justice."

mental state other than negligence" and a lawyer "may violate the rule without committing any other ethical violation. *Matter of Martinez*, 248 Ariz. 458, 467 (2020) (internal citation omitted).

From November of 2020 through at least March of 2024, Olsen has engaged in misconduct meant to mislead multiple courts, including the highest court in Arizona and the United States Supreme Court. He engaged in this misconduct through false statements and misrepresentations, violating each of the disciplinary rules described above. He has shown a willingness to engage in repeated violations of the same disciplinary rules with little if any regard for the disciplinary rules meant to keep this type of behavior in check.

Further, as described above, the Presiding Disciplinary Judge in Arizona has already found that Olsen violated rules 3.1, 3.3(a)(1), 8.4(c), and 8.4(d), by continuing to insist that an allegation from his pleadings was "undisputed" when it was actively disputed by the defendants and the court had previously noted the same. *See* Ex. 10 (Order Granting Summary Judgment).

B. Olsen engaged in improper delay tactics.

Olsen violated rule 3.2 by waiting seven weeks to seek injunctive relief seeking to change election equipment for an election less than four months away, in *Lake v. Hobbs I*.

- **Rule 3.2** provides that an attorney "shall make reasonable efforts to expedite litigation consistent with the interests of the client."[18] Rule 3.2 is intended to ensure there is no improper delay in litigation. *See Att'y Grievance Comm'n of Maryland v. Ibebuchi*, 471 Md. 286, 306 (2020) (stating "[t]hese rules ensure that the litigation process is undertaken in a manner that promotes the efficient administration of justice and fairness to the parties."); AZRPC 3.2, cmt. 1 ("[d]ilatory practices bring the administration of justice into disrepute. Delay should not be indulged merely for the convenience of the advocates, or for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.")

In sanctioning Olsen for failing to seek relief expeditiously, the Arizona District Court explained the harm caused by this delay: "Plaintiffs' counsel waited nearly seven weeks after filing this case to move for a preliminary injunction, despite alleging imminent and irreparable injury in their original Complaint. By the time of the MPI hearing on July 21, 2022, the midterm election was fewer than four months away. As noted, the relief Plaintiffs requested was remarkable and perhaps unprecedented. And…the timing of the [motion] resulted in wasting the time of election employees on the eve of the August 2022 primary election and forcing the unnecessary expenditure of taxpayer resources." Ex. 6 (Dec. 1, 2022 District Court Order) at 27-28 (cleaned up).

VI. Conclusion

[18] MARPC 19-303.2 and AZRPC 3.2.

Olsen's continuing misconduct must be swiftly addressed. In the absence of professional accountability, Olsen has shown he will continue to engage in acts intended to undermine faith in our legal system and our democracy. The repeated findings by courts that Olsen has (1) asserted patently false statements in multiple election-related lawsuits and (2) engaged in dilatory tactics that waste judicial resources and distract election officials, demonstrate Olsen's pattern of misconduct. The need to hold him accountable takes on increased urgency as the likelihood that he will continue this pattern is increased in a year with major elections on the horizon.

Complainants urge the Maryland Attorney Grievance Commission to apply for an interim injunction pending final disposition to prohibit Olsen from practicing law, considering the ample evidence that his ongoing professional misconduct poses an immediate threat of substantial harm to the administration of justice, pursuant to MARPC 19-732.[19] In a New York disciplinary proceeding against Rudolph Giuliani, the Attorney Grievance Committee sought and obtained an interim suspension of Mr. Giuliani's law license for misconduct similar to Mr. Olsen's. *See Matter of Giuliani*, 197 A.D. 3d 1, 146 N.Y.S.3d 266 [1st Dept. 2021] (concluding that the uncontroverted evidence demonstrated that Mr. Giuliani, *inter alia*, made false and misleading statements to courts and holding that the conduct "immediately threaten[ed] the public interest and warrant[ed] interim suspension").

For the foregoing reasons, the undersigned respectfully requests that the Attorney Grievance Commission swiftly complete its investigation into Olsen's conduct and impose appropriate professional discipline to deter further misconduct and protect the public.

Very truly yours,

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Additional signatories*

[19] Md. Rule of Procedure 19-732(a) states, in pertinent part: "Upon receiving information that an attorney is engaging in professional misconduct...and poses an immediate threat of causing...substantial harm to the administration of justice, Bar Counsel, with the approval of the Chair of the Commission, may apply in accordance with [standard injunction rules] for appropriate injunctive relief against the attorney. The relief sought may include restricting the attorney's practice of law[.]"

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Of Counsel to LDAD; former federal prosecutor and San Francisco Chief Assistant City Attorney

Cory Amron
President, Women Lawyers on Guard Action Network

Martha W. Barnett
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Trey Grayson
Former Secretary of State of Kentucky

Scott Harshbarger, Chairman
Former National President of Common Cause and two-term Attorney General of Massachusetts

Douglas Hauer
Law Firm Partner; LDAD Board Member

Jim Hood
Former Attorney General of Mississippi

Bruce Kuhlik
Former Assistant to the U.S. Solicitor General; former partner, Covington & Burling

Jahna Lindemuth
Former Attorney General of Alaska

Patricia Madrid
Former Attorney General of New Mexico

Loralie S. Masters
Former President, Women's Bar Association of the District of Columbia.

Thomas Mela
Retired Managing Attorney of the Massachusetts Advocates for Children; LDAD Board Member

Elliot S. Milstein
Professor Emeritus of Law
American University College of Law

Cheryl Niro
Past President, Illinois State Bar Association; Former Partner, Quinlan & Carroll, Ltd; LDAD Board Member

Peggy A. Quince
Retired Chief Justice of the Florida Supreme Court;
LDAD Board Member

Gershon M. (Gary) Ratner
Former Associate General Counsel for Litigation, U.S. Department of Housing & Urban Development;
LDAD co-founder and Board Member

Lauren Rikleen
LDAD Executive Director and Board Member; President, Rikleen Institute for Strategic Leadership; Past President, Boston Bar Association

Estelle H. Rogers
Retired Voting Rights Attorney; LDAD Board Member

Honorable Sarah R Saldaña
Former Director of the U.S. Immigration and Customs Enforcement

R. Kelly Sheridan
Retired Partner, Roberts, Carroll, Feldstein & Peirce; Former President, Rhode Island Bar Association

Virginia E. Sloan
Founder and President, The Constitution Project

Abbe Smith
Scott K. Ginsburg Professor of Law
Georgetown University Law Center

Richard J. Wilson
Emeritus Professor of Law
American University, Washington College of Law

Walter White
Vice President, Legal Compliance & Sustainability Belfika Holdings (PTY) Limited South Africa; LDAD Board Member

Governor Christine Todd Whitman
Former Governor of New Jersey

Lucien Wulsin
Founder and retired Executive Director, Insure the Uninsured Project; LDAD Board Member

**Titles and affiliations for identification purposes only*

VIA EMAIL

Hamilton P. Fox III
Office of Disciplinary Counsel
515 Fifth Street, N.W.
Building A, Room 117
Washington, DC 20001

Re: Attorney Kurt Olsen, a D.C.-licensed attorney

Dear Mr. Fox:

The States United Democracy Center ("**SUDC**") is a nonpartisan organization advancing free, fair, and secure elections. We connect state and local officials, public-safety leaders, and pro-democracy partners across America with the tools and expertise they need to safeguard our democracy. In addition, we work to ensure that people engaged in efforts to subvert democracy are held accountable, including lawyers who betray their professional responsibilities as officers of the legal system.

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 assaults on fundamental principles of our American democracy.

I. Introduction

SUDC and LDAD hereby submit this Grievance, together with the attached exhibits, against D.C. attorney Kurt Olsen ("**Olsen**"). This Complaint describes an ongoing pattern of unethical conduct, which indicates indifference to legal obligation and warrants serious investigation and discipline. *See* D.C. Rules of Professional Conduct Rule 8.4, cmt. 1 ("A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.").

Olsen has already been the subject of at least two grievances, both of which were filed in Maryland where Olsen is also barred, arising from his participation in and filing of lawsuits containing false, misleading and dishonest allegations about the 2020 and 2022 elections, namely *Texas v. Pennsylvania,*

filed in the United States Supreme Court, and, *Lake v. Hobbs I* and *II*, filed in Arizona.[1] Olsen is also currently the subject of disciplinary proceedings in Arizona based on the conduct for which he was sanctioned in *Lake v. Hobbs I* and *II*. However, according to the Arizona State Bar, since Olsen "...was admitted to practice in Arizona only in these specific cases, the harshest possible punishment he faces is a formal reprimand."[2]

Undeterred by these filings and proceedings, as described below, Olsen has continued to engage in professional misconduct, making court filings that seek to undermine confidence in our election infrastructure and our democracy more broadly, based on false, misleading and dishonest allegations.

This Grievance describes Olsen's ongoing misconduct—misconduct which violates, *at least*, rules 3.1, 3.3(a)(1), 8.4(c) and 8.4(d), *see* § V, *infra*, and requires accountability to protect the integrity of the profession and the public.

II. New Evidence Concerning Falsehoods in *Texas v. Pennsylvania* Complaint

In December 2020, the State of Texas filed *Texas v. Pennsylvania,* a lawsuit seeking to overturn the 2020 election results and to disenfranchise millions of voters in multiple states. Olsen was one of the lawsuit's primary drafters.[3] The lawsuit was patently inappropriate, asking the Supreme Court to throw out *all of the millions of votes* for president cast in the defendant states based on vague and unfounded

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[1] Michael Teter, *Ethics Complaint Against Kurt Olsen*, The 65 Project (Aug. 4, 2022), available at: https://the65project.com/ethics-complaint-against-kurt-olsen/. Michael Teter, *Ethics Complaint Against Kurt B. Olsen,* The 65 Project (Feb. 15, 2023), available at: https://the65project.com/ethics-complaint-against-kurt-b-olsen/. The Aug. 2022 Grievance also alleged Olsen engaged in misconduct by filing a frivolous lawsuit against Dominion Voting on behalf of eight individuals who received cease and desist and document preservation letters from the company. Aug. 4, 2022 Grievance at 9. More than a year later, a panel of the Tenth Circuit agreed, affirming the trial court's dismissal of the lawsuit, and further stating, in pertinent part, "Plaintiffs' claims are 'legally frivolous,'" and based on "patently frivolous state-action allegations[.]" *Cooper v. US Dominion, Inc*., No. 22-1361, 2023 WL 8613526, at *7 (10th Cir., Dec. 13, 2023) (citing *Initiative & Referendum Institute v. Walker*, 450 F.3d 1082, 1093 (10th Cir. 2006) (*en banc*) ("a plaintiff whose claimed legal right is so preposterous as to be legally frivolous may lack standing on the ground that the right is not 'legally protected.'").

[2] Caitlin Sievers, *Lake lawyers await discipline for making false claims to AZ Supreme Court*, AZ Mirror (June 3, 2024), https://azmirror.com/2024/06/03/kari-lake-lawyers-await-discipline-for-making-false-claims-to-az-supreme-court/.

[3] *See* Ex. 3 (Sept. 29, 2023 Transcript) at 11:3-8 ("So I was one of two principal drafters of the complaint. I dealt primarily with the legal arguments in the fact section relating to state violations – or violations of state election law, the facts underpinning that, and the general circumstances at issue, and so I was one of two primary drafters of that complaint."). *See also id.* at 19, 23, 26, 31 (more sworn testimony by Olsen confirming his key role in drafting the Complaint); Reply in Support of Motion for Leave to File, *Texas v. Pennsylvania*, No. 22O155 (2020), available at: https://www.supremecourt.gov/DocketPDF/22/22O155/163497/20201211110907446_TX-v-State-LeaveReply-2020-12-11.pdf (Olsen listed as an attorney submitting the filing as "Special Counsel to the Attorney General of Texas"); Reply in Support of Motion for Preliminary Injunction and Temp. Rest. Order, *Texas v. Pennsylvania*, No. 22O155 (2020), available at: https://www.supremecourt.gov/DocketPDF/22/22O155/163498/20201211111125165_TX-v-State-MPI-Reply-2020-12-11.pdf (Olsen listed as an attorney submitting the filing as "Special Counsel to the Attorney General of Texas").

claims of fraud and irregularities. *Texas v. Pennsylvania* Bill of Complaint ("**Complaint**").[4] As supposed justification for this outlandish request for relief, the Complaint asserted multiple false allegations, including, for example that there had been "outcome-determinative fraud" in the defendant states and that the odds of now-President Biden winning the election were "less than one in a quadrillion." Compl. at ¶¶ 10-11. It also misleadingly omitted any mention of prior court rulings that had already considered and dismissed claims of outcome-determinative irregularities affecting the 2020 presidential election. Several days after the filing of the Complaint, the Supreme Court denied Texas leave to file without addressing the merits.

Since the filing of the 2022 grievance filed against Olsen for his part in the *Texas v. Pennsylvania* litigation, the State Bar Court of California determined—after a 35-day trial—that multiple allegations in that Complaint were unsupported, false, misleading, and dishonest. Ex. 1 (Eastman Decision or "**Decision**") at 9-23; 81-86. As described in more detail below, the California Bar Court made its findings as part of a disciplinary proceeding against John Eastman, an attorney who filed a motion to intervene in the *Texas v. Pennsylvania* action, on behalf of candidate Trump, and with whom Olsen coordinated. *See* Ex. 3 (Sept. 29, 2023 Transcript) at 55-58; Ex. 4 (Oct. 6, 2023 Transcript) at 46. Olsen testified in the proceeding over the course of three days, and repeatedly confirmed that he was a primary author of the Complaint.[5]

As part of its disciplinary charges against Eastman, the California Office of Chief Trial Counsel ("**OCTC**") charged Eastman with willfully seeking to mislead the United States Supreme Court by expressly adopting and incorporating into a Dec. 7, 2020 intervention filing on behalf of candidate Trump, multiple false and misleading statements in the Complaint. *See* Ex. 2 (Notice of Disciplinary Charges) at 16-19. OCTC alleged this conduct violated California Business & Professions Code § 6068(d) – a close analog to Rule 3.3(a)(1) – which states it is the duty of an attorney "to employ…those means only as are consistent with truth, and *never to seek to mislead the judge…by an artifice or false statement of fact or law*." (emphasis added).

In its Decision, the State Bar Court concluded that Eastman, in adopting false statements in the Complaint, violated his duties to use truthful means and to never seek to mislead a judge. *See* Ex. 1 (Decision) at 11-13, 82-84, 127. Based on these and other findings concerning multiple ethical violations by Eastman, the Court recommended Eastman's disbarment. *Id.*

The Court made three key findings concerning the falsehoods in the Complaint:

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[4] Texas's Motion for Leave to File Bill of Complaint and Bill of Complaint is available at https://www.supremecourt.gov/DocketPDF/22/22O155/162953/20201207234611533_TX-v-State-Motion-2020-12-07%20FINAL.pdf.

[5] *See generally* Ex. 3 (Sept. 29, 2023 Transcript), Ex. 4 (Oct. 6, 2023 Transcript), and Ex. 5 (Oct. 17, 2023 Transcript). *See, in particular,* Ex. 3 (Sept. 29, 2023 Transcript) at 11:3-8 ("So I was one of two principal drafters of the complaint. I dealt primarily with the legal arguments in the fact section relating to state violations – or violations of state election law, the facts underpinning that, and the general circumstances at issue, and so I was one of two primary drafters of that complaint."), 35:2 & 66:23 – 67:12 (confirming he worked with expert to draft attached declaration); Ex. 4 (Oct. 6, 2023 Transcript) at 33:9-10 ("My role was drafting the responses to those oppositions.").

First, the Court found that the Complaint created a false impression that there had been outcome determinative fraud or misconduct in the 2020 presidential election, thereby violating the duty of candor to the tribunal. Specifically, the Court concluded that the Complaint's "allegation of 'outcome-determinative' voting irregularities was false and misleading" and further, that "the omission of relevant case decisions was misleading as it excluded vital information about prior court rulings rejecting the unfounded outcome-determinative claims—creating the false impression that such matters had not been considered and decided." Ex. 1 (Decision) at 11-13, 82-84. Ultimately, the Court concluded these allegations violated standards of professional responsibility, because "[a]ttorneys have a duty to provide courts with complete information, which includes prior adverse rulings, and to identify adverse authorities. This duty is part of an attorney's overarching ethical obligation to utilize methods that employ only such means as are consistent with the truth." Ex. 1 (Decision) at 83-84 (internal citation omitted).

Second, the Court found that the Complaint made material omissions in an effort to mislead the Supreme Court by failing to acknowledge rulings by other courts that undermined central contentions in the Complaint. For example, the Complaint alleged that state and local election officials in Pennsylvania "violated Pennsylvania's election code and adopted differential standards favoring voters in Philadelphia and Allegheny Counties with the intent to favor former Vice President Biden." Complaint at ¶ 52. But the Court found that not only was this claim unsupported, but that it omitted material facts that were or should have been known to Olsen and the other authors of the Complaint.[6] The Court explained, "[a]lthough Texas cited to its November 18, 2020 complaint in *Donald J. Trump for President, Inc. v. Boockvar* filing as support for some of these allegations, Texas did not reference the earlier Pennsylvania state and federal cases—all of which rejected those factual allegations outlined in the Bill of Complaint." Ex. 1 (Decision) at 13-16, 85-86. Ultimately, the Court concluded that failure to disclose these rulings, including a ruling by the Pennsylvania Supreme Court that its election laws had not been violated, was "strong evidence" of an intent to mislead the court. *Id.*

Third, the Court found the outlandish claim that the probability of now-President Biden winning the popular vote was "less than one in a quadrillion" was false and misrepresented the expert declaration upon which it was premised. Specifically, with respect to the Complaint's allegation that "the probability of former Vice President Biden winning the popular vote in the four Defendant States—Georgia, Michigan, Pennsylvania, and Wisconsin—independently given President Trump's early lead in those States as of 3 a.m. on November 4, 2020, is less than one in a quadrillion," the Court concluded it was false, citing, *inter alia*, disavowal of that claim by Texas's expert, Dr. Cicchetti, whose declaration was cited for support for this allegation. Ex. 1 (Decision) at 16-19, 86-87. Although the Court did not find, based on the evidence presented, that *Eastman* "was aware of the inaccuracy or falsehood of the statements" for purposes of finding an ethical violation, *see* Ex. 1 (Decision) at 87, *Olsen's* testimony concerning his primary drafting role and his work directly with Dr. Cicchetti strongly suggests *he* would or should have been. *See, e.g.,* Ex. 5 (Oct. 17, 2023 Transcript) at 41-56 (describing his drafting of the one in a quadrillion claim and Dr. Cicchetti's refutation that his affidavit supported that claim). *See also* Ex. 3 (Sept. 29, 2023 Transcript) at 35:2 and 66:23-67:12 (confirming his key role in working with Dr. Cicchetti to draft the declaration.)

[6] *See* Ex. 3 (Sept. 29, 2023 Transcript) at 28-29, 46-51 (describing Olsen's review of other relevant cases during the drafting of the Complaint).

III. Arizona Sanctions and Disciplinary Proceedings Arising from *Lake v. Hobbs I* and *II*

After the previous grievances were filed against Olsen, he made false statements to the Arizona Supreme Court in *Lake v. Hobbs, II*, as described more fully below. In 2022, Olsen was counsel of record in two lawsuits filed by failed Arizona gubernatorial candidate Kari Lake and failed secretary of state candidate Mark Finchem. Both lawsuits were unsuccessful, and Olsen was sanctioned in both cases for making false statements.

The first case, *Lake v. Hobbs I*, filed before the 2022 midterm election, sought to prohibit the use of electronic voting machines based on false and misleading claims about their reliability and accuracy. After the federal district court dismissed the complaint, it sanctioned Olsen on December 1, 2022 under Rule 11 and 28 U.S.C. § 1927. *See* Ex. 6 (Dec. 1, 2022 District Court Order). Specifically, it sanctioned Olsen for falsely alleging that Arizonans do not vote using paper ballots; falsely alleging that Arizona does not test tabulators; making assertions about the lack of security of Arizona's voting machines based on "speculation and conjecture"; and waiting seven weeks to seek injunctive relief in a case seeking a change to election equipment where the election was just four months away. *Id.* at 19. The sanctions ruling is currently on appeal before the Ninth Circuit.

The second case, *Lake v. Hobbs II*, filed after the 2022 midterm election, sought to contest the election results on the basis of false and misleading claims that, *inter alia*, "the number of illegal votes cast in Arizona's general election on November 8, 2022, far exceeds the 17,117-vote margin" by which Lake lost. As with *Lake I*, Olsen was sanctioned, this time by the Arizona Supreme Court, for making yet another false assertion. *See* Ex. 7 (May 4, 2023 Arizona Supreme Court Order). Specifically, the Arizona Supreme Court sanctioned Olsen for repeating in his petition that it was an "undisputed fact that 33,563 unaccounted for ballots were added to the total number of ballots at a third-party processing facility." *Id.* Because the "fact" was disputed, the Court said Olsen's claim that it was undisputed was "unequivocally false." *Id*.

Arizona Bar Counsel recently filed before the Presiding Disciplinary Judge there two formal Complaints against Olsen based on the conduct for which he was sanctioned by the Arizona District Court and the Arizona Supreme Court. *See* Ex. 8 (Formal Complaint 2024-9003) (re *Hobbs I*) & Ex. 9 (Formal Complaint 2024-9004) (re *Hobbs II*). Each Complaint alleges Olsen violated multiple Arizona Rules of Professional Conduct, including 1.3, 3.1, 3.3(a)(1), 8.4(c), and 8.4(d).

On April 30, 2024, the Presiding Disciplinary Judge granted summary judgment against Olsen in the *Hobbs II* disciplinary case, finding Olsen violated Arizona Rules of Professional Conduct 3.1, 3.3(a)(1), 8.4(c), and 8.4(d), by knowingly and falsely asserting "it was an "undisputed fact" that 35,563 ballots were added by the third-party processing facility[.]" *See* Ex. 10 (Order Granting Summary Judgment). As the Presiding Disciplinary Judge explained, this claim "was indisputably false, and Respondent knew it . . . Even after the Supreme Court placed Respondent on notice that this claim was 'unsupported by the record' and that sanctions were possible as a result, he continued to advance it." *Id.* at 4. A hearing to determine Olsen's sanction is set for July 9, 2024, although according to the Arizona State Bar, the

harshest possible punishment Olsen faces is a formal reprimand, since he is not a member of the Arizona Bar.[7]

IV. Olsen's Misconduct Continues

Notwithstanding the above-referenced sanctions and disciplinary proceedings, Olsen has continued to engage in misconduct, most recently in connection a Petition for Writ of Certiorari ("Petition")[8] and Petitioners' Motion to Expedite ("Motion to Expedite")[9] filed in the U.S. Supreme Court seeking review of the Ninth Circuit's decision in *Lake v. Hobbs I*.

The Petition included false and misleading allegations—one of which had been the basis of sanctions. Specifically:

1) The Petition falsely and misleadingly asserts that Arizona uses ballot marking devices (BMDs) to vote, rather than hand-marked paper ballots, stating "The Georgia BMD software that could be manipulated 'to steal votes' according to the Curling plaintiffs' expert is essentially what Maricopa uses." *See* Petition at 3. In fact, as Olsen knows and as the Arizona District Court explained below "the overwhelming majority of Arizona voters—99.8% of voters in the 2020 general elections in Maricopa County, for example—do not use BMDs to cast their votes." Ex. 6 (Dec. 1, 2022 District Court Order) at 11. They use hand-marked paper ballots.[10] This was among the claims for which the Arizona District Court sanctioned Olsen in 2022. Indeed, the District Court dedicated seven pages to thoroughly explaining the false and misleading nature of Olsen's allegations regarding use of paper ballots. *Id.* at 7-13. The Court's finding about Arizona's use of paper ballots was unequivocal: "In short, it cannot be disputed that Arizona already requires and uses paper ballots. Allegations to the contrary are simply false." *Id.* at 7. And the Court rejected the plaintiffs' argument that their assertions about paper ballots were not misleading, stating "[u]sing those broader terms allowed Plaintiffs to misleadingly analogize the machines used in Arizona to those used in other jurisdictions, including the machines at issue in the *Curling v. Raffensperger* case in the Northern District of Georgia" and "...the *Curling* case is nothing like this one, in part because Arizona, unlike Georgia, uses paper ballots." *Id.* at 10-11.

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[7] Caitlin Sievers, *Lake lawyers await discipline for making false claims to AZ Supreme Court*, AZ Mirror (June 3, 2024), https://azmirror.com/2024/06/03/kari-lake-lawyers-await-discipline-for-making-false-claims-to-az-supreme-court/.

[8] Petition for Writ of Certiorari, *Lake v. Fontes*, No. 23-1021 (2023), available at: https://www.supremecourt.gov/DocketPDF/23/23-1021/303129/20240314174416788_23-_PetitionForWritOfCertiorari.pdf.

[9] Petitioners' Motion to Expedite, *Lake v. Fontes*, No. 23-1021 (2023), available at: https://www.supremecourt.gov/DocketPDF/23/23-1021/303592/20240320211328102_Lake Mot to Expedite signed.pdf.

[10] One hundred percent of Arizonans "liv[e] in jurisdictions [that] us[e] Hand Marked Paper Ballots for most voters" whereas one hundred percent of Georgia voters "liv[e] in jurisdictions which us[e] Ballot Marking Devices for all voters." *See* Verified Voting, *The Verifier – Election Day Equipment – November 2024,* 2024, available at: https://verifiedvoting.org/verifier/#mode/navigate/map/ppEquip/mapType/normal/year/2024.

2) The Petition falsely states 217,000 ballots were rejected in Maricopa County on Nov. 8, 2022 due to machine errors, thereby falsely and misleadingly implying that 217,000 ballots were not counted. Petition at 11 ("Maricopa's vote center tabulators rejected 7,000 ballots every thirty minutes…totaling over 217,000 rejected ballot insertions[.]"). In fact, according to Maricopa County, only 16,724 ballots were rejected at voting locations, and they were all counted at the Elections Department."[11]

The Supreme Court denied the Petition on April 22, 2024.[12]

V. Request for Investigation and Discipline

Based on the conduct discussed above, Complainants respectfully request that the D.C. Attorney Grievance Commission promptly investigate whether Olsen should be charged with violating multiple DC Rules of Professional Conduct ("**DCRPC**") or its applicable analogs under the Arizona Rules of Professional Conduct ("**ARPC**") including, without limitation, the rules identified below.[13]

A. Olsen made numerous false and misleading claims and allegations across multiple cases and jurisdictions.

Olsen's myriad false and misleading allegations and claims before the United States Supreme Court in *Texas v. Pennsylvania*, before the Arizona federal and state courts in *Lake v. Hobbs I* and *Lake v. Hobbs II* and, most recently, again, before the United States Supreme Court in the Petition and Motion to

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[11] *See* Sudiksha Kochi, *Fact check: Kari Lake falsely claims that nearly 250,000 voting attempts failed in midterms*, USA Today (Feb. 3, 2023) ("Megan Gilbertson, a Maricopa County elections spokesperson, called the claim 'textbook disinformation.' She said the Maricopa County logs in question show how many times voters attempted to insert ballots into tabulators...The logs simply show the total number of times that ballots were run through tabulators in the November 2022 General Election[.]'…She said it's not unusual for a ballot to be rejected on the first try, for example, if the voter inserted it crooked. Gilbertson said 16,724 Election Day ballots were not able to be counted onsite at voting locations and were instead counted at the Elections Department. In some cases voters tried feeding their ballot a dozen or more times before the ballot was set aside to be counted separately."), https://www.usatoday.com/story/news/factcheck/2023/02/03/fact-check-false-claim-250-000-arizona-voting-attempts-failed/11169708002/. *See also* Caitlin Sievers, *Kari Lake and Mark Finchem appeal their tabulator case to the U.S. Supreme Court, AZ Mirror* (Mar. 15, 2024), https://azmirror.com/2024/03/15/kari-lake-and-mark-finchem-appeal-their-tabulator-case-to-the-u-s-supreme-court/.

[12] *Lake v. Fontes*, No. 23-1021, 2024 WL 1706042, at *1 (U.S. Apr. 22, 2024).

[13] Although the Arizona Rules appear to apply to much of Olsen's conduct pursuant to DCRPC 8.5(b), the relevant DC Rules are almost all identical. DCRPC 8.5(b), regarding choice of law, provides: "In any exercise of the disciplinary authority of this jurisdiction, the Rules of Professional Conduct to be applied shall be as follows: (1) For conduct in connection with a matter pending before a tribunal, the rules to be applied shall be the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise, and (2) For any other conduct, (i) If the lawyer is licensed to practice only in this jurisdiction, the rules to be applied shall be the rules of this jurisdiction, and (ii) If the lawyer is licensed to practice in this and another jurisdiction, the rules to be applied shall be the rules of the admitting jurisdiction in which the lawyer principally practices; provided, however, that if particular conduct clearly has its predominant effect in another jurisdiction in which the lawyer is licensed to practice, the rules of that jurisdiction shall be applied to that conduct.

Expedite reflect a pattern and practice of dishonest conduct that violates rules 3.1, 3.3(a)(1), 8.4(c) and 8.4(d).

- **Rule 3.1** provides that "[a] lawyer shall not...assert...an issue...unless there is a good faith basis in...fact for doing so that is not frivolous[.]."[14] Courts apply "an objective standard to assess whether a legal proceeding is frivolous, but a subjective standard to determine whether the lawyer acted in good faith." *In re Alexander*, 232 Ariz. 1, 5 (2013) (suspending attorney who maintained frivolous RICO lawsuit), citing *In re Levine*, 174 Ariz. 146, 153 (1993)). "A lawyer's motives and knowledge can be inferred from the frivolousness of a claim." *Alexander*, 232 Ariz. at 5 (citing *Levine*, 174 Ariz. at 154).

- **Rule 3.3(a)(1)** provides that "[a] lawyer shall not knowingly... make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer."[15] Attorneys are "under an obligation not to mislead [a] court through an intentional omission." *Matter of Ireland*, 146 Ariz. 340, 342 (1985).

- **Rule 8.4(c)** provides "[i]t is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation."[16] *See In re Alcorn*, 202 Ariz. 62, 64 (2002), as corrected (Mar. 21, 2002) (failing to disclose a material fact was "tantamount to an affirmative misrepresentation" and violated 8.4(c)). "A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation." Rule 8.4, cmt. 1.

- **Rule 8.4(d)** provides that "[i]t is professional misconduct for an attorney to engage in conduct that is prejudicial to the administration of justice."[17] A violation of Rule 8.4(d) "does not require a mental state other than negligence" and a lawyer "may violate the rule without committing any other ethical violation. *Matter of Martinez*, 248 Ariz. 458, 467 (2020) (internal citation omitted).

From November of 2020 through at least March of 2024, Olsen has engaged in misconduct meant to mislead multiple courts, including the highest court in Arizona and the United States Supreme Court. He engaged in this misconduct through false statements and misrepresentations, violating each of the disciplinary rules described above. He has shown a willingness to engage in repeated violations of the same disciplinary rules with little if any regard for the disciplinary rules meant to keep this type of behavior in check.

Further, as described above, the Presiding Disciplinary Judge in Arizona has already found that Olsen violated rules 3.1, 3.3(a)(1), 8.4(c), and 8.4(d), by continuing to insist that an allegation from his

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[14] AZRPC 3.1; DCRPC 3.1 provides "[a] lawyer shall not...assert...an issue...unless there is a basis in…fact for doing so that is not frivolous[.]"

[15] AZRPC 3.3(a)(1); DCRPC 3.3(a)(1).

[16] AZRPC 8.4(c); DCRPC 8.4(c).

[17] AZRPC 8.4(d); DCRPC 8.4(d) provides "[i]t is professional misconduct for a lawyer to engage in conduct that seriously interferes with the administration of justice."

pleadings was "undisputed" when it was actively disputed by the defendants and the court had previously noted the same. *See* Ex. 10 (Order Granting Summary Judgment).

B. Olsen engaged in improper delay tactics.

Olsen violated rule 3.2 by waiting seven weeks to seek injunctive relief seeking to change election equipment for an election less than four months away, in *Lake v. Hobbs I*.

- **Rule 3.2** provides that an attorney "shall make reasonable efforts to expedite litigation consistent with the interests of the client."[18] Rule 3.2 is intended to ensure there is no improper delay in litigation. *See* AZRPC 3.2, cmt. 1 ("[d]ilatory practices bring the administration of justice into disrepute. Delay should not be indulged merely for the convenience of the advocates, or for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.")

In sanctioning Olsen for failing to seek relief expeditiously, the Arizona District Court explained the harm caused by this delay: "Plaintiffs' counsel waited nearly seven weeks after filing this case to move for a preliminary injunction, despite alleging imminent and irreparable injury in their original Complaint. By the time of the MPI hearing on July 21, 2022, the midterm election was fewer than four months away. As noted, the relief Plaintiffs requested was remarkable and perhaps unprecedented. And…the timing of the [motion] resulted in wasting the time of election employees on the eve of the August 2022 primary election and forcing the unnecessary expenditure of taxpayer resources." Ex. 6 (Dec. 1, 2022 District Court Order) at 27-28 (cleaned up).

VI. Conclusion

Olsen's continuing misconduct must be swiftly addressed. In the absence of professional accountability, Olsen has shown he will continue to engage in acts intended to undermine faith in our legal system and our democracy. The repeated findings by courts that Olsen has (1) asserted patently false statements in multiple election-related lawsuits and (2) engaged in dilatory tactics that waste judicial resources and distract election officials, demonstrate Olsen's pattern of misconduct. The need to hold him accountable takes on increased urgency as the likelihood that he will continue this pattern is increased in a year with major elections on the horizon.

Complainants urge the Board on Professional Responsibility to petition for a temporary suspension pending final disposition to prohibit Olsen from practicing law, considering the ample evidence that his ongoing professional misconduct poses a substantial threat of serious harm to the public, pursuant to

[18] AZRPC 3.2; DCRPC 3.2(b) provides a lawyer "shall make reasonable efforts to expedite litigation consistent with the interests of the client."

D.C. Bar R. XI, § 3(c).[19] In a New York disciplinary proceeding against Rudolph Giuliani, the Attorney Grievance Committee sought and obtained an interim suspension of Mr. Giuliani's law license for misconduct similar to Mr. Olsen's. *See Matter of Giuliani*, 197 A.D. 3d 1, 146 N.Y.S.3d 266 (1st Dept. 2021) (concluding that the uncontroverted evidence demonstrated that Mr. Giuliani, *inter alia*, made false and misleading statements to courts and holding that the conduct "immediately threaten[ed] the public interest and warrant[ed] interim suspension").

For the foregoing reasons, the undersigned respectfully requests that the Attorney Grievance Commission swiftly complete its investigation into Olsen's conduct and impose appropriate professional discipline to deter further misconduct and protect the public.

Very truly yours,

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Lawyers Defending American Democracy
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Amb. Norman Eisen (ret.)
Former White House Special Counsel for Ethics and Government Reform

Evan Falchuk
CEO, Family First; Former independent gubernatorial candidate for Massachusetts;

[19] D.C. Bar R. XI, §3(c) provides, in pertinent part, "[o]n petition of the Board...supported by an affidavit showing that an attorney appears to pose a substantial threat of serious harm to the public...the Court may issue an order, with such notice as the Court may prescribe, temporarily suspending the attorney or imposing temporary conditions of probation on the attorney, or both."

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**Titles and affiliations for identification purposes only*