

Congress of the United States
Washington, DC 20515

December 2, 2020

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

Re: Request for Disciplinary Investigation of Joseph E. diGenova

To the Disciplinary Counsel:

When we became attorneys, we swore an oath to abide by a professional code of conduct and ethics. We took that oath full well knowing that professional conduct does not disappear once you have left the courtroom. It is critical to maintaining both the integrity of our profession and the integrity of our clients, that members of the legal profession abide by this code when they are in the public eye.

Unfortunately, one of President Donald Trump's attorneys, Mr. Joseph E. diGenova, does not share this view and has recently acted in violation of this code. That is why we are asking you to initiate an investigation into statements made by Mr. diGenova, a District of Columbia-licensed attorney, which we believe to be in violation of the District of Columbia's Rules of Professional conduct. On Monday, November 30, Mr. diGenova dialed into "The Howie Carr Show" and called for the death of former Cybersecurity and Infrastructure Security Agency Director Christopher Krebs, who was fired by the President in November of this year after assuring the American public that the 2020 election was secure. Specifically, Mr. diGenova said: "Anybody who thinks that this [2020] election went well, like that idiot Krebs, who used to be the head of cybersecurity... That guy is a Class A moron... He should be drawn and quartered. Taken out at dawn and shot."¹

This egregious statement by a former U.S. attorney and lawyer for the President of the United States first and foremost puts Mr. Krebs' life in jeopardy. The continued use of violent rhetoric from President Trump, who has openly encouraged his supporters to engage in violent physical acts against his political opponents, has fostered a climate in which Mr. diGenova's statements may well be taken as an implicit green light – especially by those who look for hidden meaning and direction in the President's words.²

Furthermore, the security of the 2020 election is the subject of ongoing litigation that Mr. diGenova is a part of as the President's attorney, and Mr. Krebs' statement that the election was

¹Jim Acosta, Jake Tapper, and Devan Cole, "Trump attorney issues call for violence against truth-telling former election cybersecurity official," *CNN*, November 30, 2020. <https://www.cnn.com/2020/11/30/politics/joe-digenova-attorney-trump-campaign-chris-krebs-violence/index.html>

²Fabiola Cineas, "Donald Trump is the accelerant," *Vox*, October 9, 2020. <https://www.vox.com/21506029/trump-violence-tweets-racist-hate-speech>

secure is necessarily part of these cases. Therefore, Mr. diGenova’s blatant threat to Mr. Krebs’ life inexorably interferes with the work of the courts in addressing the President’s claims about the security of the election in violation of Rule 8.4.³ Further, Mr. diGenova should have known this threat, which was made by means of mass public communication, could prejudice any proceeding in which Mr. Krebs would be called as a witness in violation of Rule 3.6.⁴

Mr. diGenova’s conduct is also in direct violation of Rule 4.4: Respect for Rights of a Third Person, which states: “(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or knowingly use methods of obtaining evidence that violate the legal rights of such a person.”⁵ Calling for Mr. Krebs’ death serves no legitimate or substantial purpose other than placing a grotesque burden on him and his family.

Finally, we are deeply concerned that Mr. diGenova’s statement will have a chilling effect on dissent, public service, and whistleblowing – the latter of which the United States Congress has continued to encourage through statute for decades. Mr. Krebs only sought to explain honestly to the American public the ways in which the 2020 election were secure from a cybersecurity standpoint, a fact that has been obscured by objectively false statements from the President and his legal team. In the United States, we cannot and will not allow death threats – especially from those acting on the President’s behalf – to silence discourse, dissent, and honesty.

Mr. diGenova’s comments are on their face a violation of the Rules of Professional Conduct and adversely reflect on his honesty, trustworthiness and fitness as a lawyer. Above all, however, this Counsel and the District of Columbia Bar has a strong interest in maintaining the integrity of the profession as a whole. If a lawyer licensed in the District of Columbia can – while speaking in a representative capacity – publicly call for the death of his client’s perceived adversaries without consequences, the Counsel has abjectly failed in its duty. The Counsel must apply its standards equally and open an investigation into Mr. diGenova immediately.

We thank you for your prompt attention to this matter.

Sincerely,



Kathleen M. Rice
Member of Congress, NY-04



Ted W. Lieu
Member of Congress, CA-33

³ “D.C. Bar Rules of Professional Conduct, Rule 8.4: Misconduct,” *District of Columbia Bar*. Accessed December 1, 2020. <https://www.dcbbar.org/For-Lawyers/Legal-Ethics/Rules-of-Professional-Conduct/Maintaining-the-Integrity-of-the-Profession/Misconduct>

⁴ “D.C. Bar Rules of Professional Conduct, Rule 3.6: Trial Publicity,” *District of Columbia Bar*. Accessed December 1, 2020. <https://www.dcbbar.org/For-Lawyers/Legal-Ethics/Rules-of-Professional-Conduct/Advocate/Trial-Publicity>

⁵ “D.C. Bar Rules of Professional Conduct, Rule 4.4: Respect for Rights of Third Persons,” *District of Columbia Bar*. Accessed December 1, 2020. <https://www.dcbbar.org/For-Lawyers/Legal-Ethics/Rules-of-Professional-Conduct/Transactions-With-Persons-Other-Than-Clients/Respect-for-Rights-of-Third-Persons>