

June 15, 2017

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

Re: Complaint vs. Marc E. Kasowitz

Dear Sir or Madam:

Campaign for Accountability respectfully asks that you investigate whether attorney Marc E. Kasowitz violated District of Columbia Rules of Professional Conduct regarding the unauthorized practice of law and dealing with unrepresented parties.

Background

As you may know, President Donald J. Trump has retained New York attorney Marc E. Kasowitz to represent him in connection with ongoing investigations into possible collusion between the Russian government and the Trump campaign to ensure President Trump's victory in the 2017 presidential election and whether the president engaged in obstruction of justice.

According to a recent report in *The New York Times*, Mr. Kasowitz, who reportedly is seeking an office in the Old Executive Office building, has advised White House staff that they need not retain their own counsel. According to the *Times*,

Mr. Kasowitz has advised White House aides to discuss the inquiry into Russia's interference in last year's election as little as possible, two people involved said. He told aides gathered in one meeting who had asked whether it was time to hire private lawyers that it was not yet necessary, according to another person with direct knowledge.¹

Mr. Kasowitz reportedly "bypassed the White House Counsel's Office in having these discussions."²

As former White House Counsel Robert Bauer explained, "[t]he president's private lawyer is representing only his interests, not the interests of the United States government or the individual

¹ Rebecca R. Ruiz and Sharon LaFraniere, Role of Trump's Lawyer Blurs Public and Private Lines, *The New York Times*, June 11, 2017 available at <https://www.nytimes.com/2017/06/11/us/politics/trump-lawyer-marc-kasowitz.html>.

² *Id.*

interests of the White House staff.”³ Typically, the White House Counsel’s Office supervises discussions with staff “to make sure the aides understand their rights and do not feel pressured to help a lawyer who does not represent their interests, legal experts said.”⁴

Potential Violations

District of Columbia Bar Rule 5.5(a) provides “a lawyer shall not practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction.”⁵

Nevertheless, Mr. Kasowitz met with White House aides inside the White House complex and advised them there is no need for them to retain counsel. According to the biography posted on Mr. Kasowitz’s firm’s website, Mr. Kasowitz is a member of the New York bar, but not the District of Columbia bar.⁶ Therefore, by offering aides the legal advice not to retain counsel, it appears Mr. Kasowitz engaged in the unauthorized practice of law in violation of Rule 5.5(a).

Further, District of Columbia Bar Rule 4.3, Dealing With Unrepresented Person, provides:

(a) In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not:

(1) Give advice to the unrepresented person other than the advice to secure counsel, if the interests of such person are or have a reasonable possibility of being in conflict with the interests of the lawyer’s client.⁷

The comment to the rule explains that an unrepresented person might assume that a lawyer is providing disinterested advice and, therefore, must take particular care not to exploit this assumption.⁸ The comment further states, “the possibility of the lawyer’s compromising the unrepresented person’s interests is so great that the rule prohibits the giving of any advice, apart from the advice that the unrepresented person obtain counsel.”⁹

By advising White House staff members, who are not represented by counsel and who have a reasonable possibility of having interests in conflict with the interests of President Trump, Mr. Kasowitz’s client, that they do not need to hire their own counsel, Mr. Kasowitz appears to have violated Rule 4.3.

Conclusion

White House staff members, aware of numerous congressional investigations as well as an investigation by Special Counsel Robert Mueller, may justifiably be concerned about whether they are in any legal jeopardy. It is in President Trump’s interests that those staff members – who may be questioned as witnesses by either the special counsel or a congressional committee –

³ *Id.*

⁴ *Id.*

⁵ <https://www.dcbbar.org/bar-resources/legal-ethics/amended-rules/rule5-05.cfm>.

⁶ See <http://www.kasowitz.com/marc-e-kasowitz/>.

⁷ <https://www.dcbbar.org/bar-resources/legal-ethics/amended-rules/rule4-03.cfm>.

⁸ *Id.*

⁹ *Id.*

Disciplinary Counsel

June 15, 2017

Page 3

not retain their own counsel, as doing so would severely limit Mr. Kasowitz's ability to talk to them, potentially helping to shape their testimony, before they are interviewed. It is for this very reason that the rule prohibits a lawyer from offering an unrepresented party any legal advice save advice to retain counsel exists.

Given the exigencies of the situation, to protect the numerous staff members in the White House who may find themselves ensnared in the investigations and who may come to regret heeding Mr. Kasowitz's advice, Campaign for Accountability requests that you immediately initiate an investigation into whether Mr. Kasowitz violated the Rules of Professional Conduct.

Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dan E Stevens", with a long horizontal flourish extending to the right.

Daniel E. Stevens
Executive Director

cc: Departmental Disciplinary Committee for the First Department
New York State Bar

Donald McGahn
White House Counsel