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## Government's own lawyers have been placed in harm's way

■ THOMAS F. MAFFEI AND EDWARD S. CHENG

The administration has placed government lawyers in jeopardy. They are subject to the same rules and statutes that the president's executive orders instruct the attorney general of the United States and other administration lawyers to enforce against private lawyers and law firms. The president's memorandum to the attorney general dated March 22 orders the AG to enforce Rule 11 of the Federal Rules of Civil Procedure against lawyers who lie to courts or who assert claims "for improper purpose[s]," including "to harass, cause unnecessary delay, or needlessly increase the cost of litigation." FRCP 11(b)(1).



This memorandum also instructs administration lawyers to seek sanctions against lawyers who violate Rule 3.1 of the Model Rules of Professional Conduct, which states: "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."

Finally, the president seeks to wrest control of the oversight of lawyers away from the judicial branch, where it resides, and usurp for himself the power to sanction and discipline lawyers. That power rests with boards of bar overseers in every jurisdiction, acting under the aegis of state supreme courts.

The president wrote: "I further direct the Attorney General to take all appropriate action to refer for disciplinary action any attorney whose conduct in Federal court or before any component of the Federal Government appears to violate professional conduct rules, including rules governing meritorious claims and contentions, and particularly in cases that implicate national security, homeland security, public safety, or election integrity." He, and he alone, will decide what disciplinary sanction will be imposed on any lawyer who, according to him, has violated the ethics rules



or Rule 11.

Even a cursory review of the complaints filed by WilmerHale, Jenner & Block and Perkins Coie challenging the administration's executive orders and the many amicus briefs and position papers issued by bar associations, law firms and law schools across the United States establish, without question, that the president has no authority to enforce the rules of professional conduct against lawyers and that it is illegal and unconstitutional to target lawyers and law firms based on the identity of the clients they represent or the positions they take on behalf of those clients.

The president's actions run counter to long-established law in every state and in the federal system. By targeting lawyers and law firms, the president's attacks strike at the heart of our adversary system, which does not

function unless each side is ably represented by lawyers. Lawyers have an unquestioned right, indeed, an obligation, to represent clients with independence and without interference by any third party. Importantly, clients have an unquestioned right to retain any lawyer they choose in civil and criminal cases. The president has availed himself of that right in numerous cases. Efforts to chill or punish lawyers for representing their clients deprive clients of the right to select a lawyer or advance positions adverse to the government. No lawyer could argue in court or otherwise deny that these rights exist.

As recently as 2024, the Supreme Court reaffirmed the well-established First Amendment principle that “[g]overnment officials cannot attempt to coerce private parties in order to punish or suppress views that the government disfavors.” *Nat’l Rifle Ass’n of Am. v. Vuollo*, 602 U.S. 175, 180 (2024).

The president’s actions would be illegal, even if well-motivated. But his actions are much worse. He publicly has explained his ill motivation in targeting lawyers and law firms. His sole purpose appears to be to harass and burden lawyers and law firms, to bend them to his will, to disrupt the representation of clients who choose to retain them, and to discourage them from taking positions that are opposed to him and his policies.

His scheme has worked with some law firms. Paul Weiss and several other large law firms have already come to heel.

The ethics rules governing lawyers were first promulgated in 1908 by the American Bar Association.

Over the more than 100 years that have passed, the lawyer ethics rules have been studied and debated by legions of practicing lawyers, bar associations and law professors. Their efforts have been aimed at protecting lawyers’ representation of their clients, maintaining independence, and preventing lawyers from abusing the legal system by pushing frivolous claims or harassing, burdening or harming others. Those rules apply to all lawyers, not just private practitioners.

The ethics rules governing lawyers are primarily for the protection of the public, including a person’s right to retain a lawyer of his or her own choosing and to have a lawyer who is honest and trustworthy and who has no conflicting interests.

The rules are also written to protect our system of justice. They empower lawyers to constrain clients who are bent on using the courts to harass or burden an opposing party by filing frivolous claims or by taking positions that have no good-faith basis in law or in fact. When a client tells his or her lawyer that he or she is seeking retribution, and acts accordingly, a red flag should go up. During and following the president’s first term, some of his high-profile lawyers stepped into harm’s way when promoting his agenda.

Over our long history, lawyers have stood out. In 1770, John Adams bravely represented the British soldiers who opened fire at what became known as the Boston massacre.

One hundred and fifty years later, against massive public uproar, Hill & Barlow, a respected Boston

law firm, took the appeal from the convictions on Sacco and Vanzetti, two Italian immigrants charged with murder.

Almost 200 years after John Adams represented the British soldiers, another Boston lawyer, Elliot Richardson, then the U.S. attorney general, resigned rather than fire Archibald Cox, the special prosecutor in the Watergate scandal.

In 1954, Hale & Dorr partner, Joseph Welch, defended a Hale & Dorr associate, Frederick Fisher, in the so-called Army-McCarthy hearings from accusations by Sen. Joseph McCarthy that Fisher had been a member of a communist organization while in school. In their famous exchange, Welch asked McCarthy: “Have you no sense of decency, sir, at long last? Have you left no sense of decency?”

On the other side of the coin, judges have wondered how illegal behavior could have occurred in the presence of lawyers. For example, in the early 1990s, in the federal cases involving widespread fraud in the savings and loan business that triggered one of this country’s largest financial crises, the presiding judge, Stanley Sporkin, became famous for asking: “Where were the lawyers?” *Lincoln Sav. & Loan Ass’n v. Wall*, 743 F. Supp. 901, 920 (D.D.C. 1990).

There is no doubt that there are thousands of lawyers who every day adhere to the ethics rules, protect the courts, and uphold the system of justice in this country.

There are storm clouds on the horizon for government lawyers.

The president has now directed his lawyers to enforce Rule

11 and the ethics rules against lawyers for offenses that are not specifically detailed. It appears his complaint is that these lawyers and law firms have opposed, or may oppose, him or his agenda. In one of his executive orders, he wrote, "I hereby direct the Attorney General to seek sanctions against attorneys and law firms who engage in frivolous, unreasonable, and vexatious litigation against the United States or in matters before executive departments and agencies of the United States."

In the order against WilmerHale, the president wrote that "WilmerHale engages in obvious partisan representations to achieve political ends, supports efforts to discriminate on the basis of race, backs the obstruction of efforts to prevent illegal aliens from committing horrific crimes and trafficking deadly drugs within our borders, and furthers the degradation of the quality of American elections, including by supporting efforts designed to enable noncitizens to vote."

His executive order directed at Jenner & Block reads similarly: "Jenner engages in obvious partisan representations to achieve political ends, supports attacks against women and children based on a refusal to accept the biological reality of sex, and backs the obstruction of efforts to prevent illegal aliens from committing horrific crimes and trafficking deadly drugs within our borders."

To their credit, WilmerHale, Jenner & Block and Perkins Coie have filed suit to challenge these

executive orders. They are supported by lawyers, law firms and bar organizations throughout the country.

The government lawyers defending the administration have difficult decisions to make. Their duties and obligations as lawyers are not delegable. Every lawyer is responsible for conforming his or her actions and statements to the law and the ethical rules governing all lawyers.

There are storm clouds on the horizon for government lawyers. The New York Times recently reported on a government lawyer who appeared in court in the federal case involving the deportation of Kilmar Armando Abrego Garcia, the Maryland man who was deported to El Salvador. According to the article, in responding to questions from the judge, the attorney conceded that Garcia should not have been deported. Deputy Attorney General Todd Blanche suspended the lawyer for failing to "follow a directive from your superiors." The AG issued a statement: "At my direction, every Department of Justice attorney is required to zealously advocate on behalf of the United States. Any attorney who fails to abide by this direction will face consequences."

Government lawyers, like all lawyers, are prohibited from engaging in conduct that is "prejudicial to the administration of justice. Model Rule 8.4 (d). They must respond truthfully to questions put to them by the judges before whom they appear. Model Rule 3.3(a). They must also take positions and advance claims

that are not frivolous but are grounded in fact and advanced in good faith. Model Rule 3.1.

Finally, government lawyers are directed not to make false statements or statements with "reckless disregard to its truth or falsity" concerning the qualifications or integrity of a judge or other judicial officer. Model Rule 8.2 (a).

These issues are now front and center. Will government lawyers argue that shutting off a lawyer's access to a federal courthouse does not interfere with the client's right to be represented by their chosen lawyer in a case pending in that courthouse?

When asked whether they have a good-faith basis to state that the lawyers at WilmerHale or Jenner & Block have obstructed efforts to prevent "illegal aliens from committing horrific crimes and trafficking deadly drugs within our borders," will they say "yes," and, if so, will they produce the evidence? Will that "evidence" be anything beyond the fact that lawyers represented their clients (often successfully) in litigation opposed to the Trump administration's agenda?

Finally, will they have any evidence to back up the statement that WilmerHale "furthers the degradation of the quality of American elections, including by supporting efforts designed to enable noncitizens to vote?"

We shall see.

*Thomas F. Maffei and Edward S. Cheng practice law at Sherin and Lodgen in Boston. They have taught professional responsibility at area law schools and advise lawyers and law firms on professional ethics issues.*