

The highest court in the land has recognized that “[o]f all classes and professions, the lawyer is most sacredly bound to uphold the laws.” *Ex parte Wall*, 107 U.S. 265, 274 (1883). Our highest state court has spoken in that same vein, cautioning that “an attorney . . . has no right to so conduct himself as to dishonor his profession or bring the courts into disrepute.” *In re Mains*, 121 Mich 603, 608–09 (1899). And the Michigan Supreme Court has put flesh on those bones by explaining that “[n]either the letter nor the spirit of the attorney’s privilege permits him to enter our courts and spread upon judicial records charges of a shocking and felonious character.” *Id.* at 610 (1899) (internal citation and quotations omitted).

As the words of our high courts demonstrate, a license to practice law is more than just permission to practice one’s chosen profession. It is a grave responsibility—one that requires attorneys to use the immense power of the law only within the confines of the highest ethical standards. An attorney who misuses that power can imperil fortunes, endanger liberties, and jeopardize lives. And as an officer of the court, an attorney who abuses the court system places in peril the very administration of justice that we cherish and depend on.

Michigan attorney Richard Scott Hagerstrom (P57885) is such an attorney. He did not just tiptoe near a precarious ethical line—he outright crossed it. By filing a frivolous lawsuit based on false statements and by brazenly attempting to disenfranchise Michigan voters during the recent presidential election, he engaged in grave attorney misconduct.

Michigan’s Attorney General, Secretary of State, and Governor therefore write jointly to ask you to hold Mr. Hagerstrom accountable to the attorney oath and ethical rules (particularly Rules 3.1, 3.3(a)(1) and 3.3(a)(3) 3.1 of the Michigan Rules of Professional Conduct) that govern his conduct. The Attorney General cares deeply about protecting the administration of justice and sending an important message about appropriate attorney conduct. The Secretary of State in her role as chief elections officer is equally concerned about protecting the voter franchise and the integrity of elections. And the Governor is the chief executive of the state, constitutionally charged with ensuring that the laws are faithfully executed. We urge you to find that Mr. Hagerstrom has abused his privilege to practice law and to impose the harshest sanctions available. Nothing short of permanent disbarment would be appropriate under these circumstances. Nor could any lesser sanction cleanse the taint that Mr. Hagerstrom brings to the Michigan Bar by his continued association with it.

On November 25, 2020, Mr. Hagerstrom signed a complaint in the United States District Court for the Eastern District of Michigan seeking to overturn the results of the 2020 presidential election in Michigan and disenfranchise the more than 5.4 million Michiganders who voted in that election. (*King, et al. v. Whitmer*, E.D.

Mich. No. 2:20-cv-13134.) The factual allegations made in support of the complaint were outrageous and patently false, and the legal arguments advanced were frivolous. The complaint's complete lack of merit caused federal Judge Linda V. Parker to deny the plaintiffs' motion for a temporary restraining order, and in doing so, to say the following: "[T]his lawsuit seems to be less about achieving the relief Plaintiffs seek—as much of that relief is beyond the power of this Court—and more about the impact of their allegations on People's faith in the democratic process and their trust in our government." \_\_\_ F Supp. 3d \_\_\_; 2020 WL 7134198, at \*13.

Although Mr. Hagerstrom's attempt inevitably failed, it served a second, more sinister purpose—one that is not easily remedied, even by the court's dismissal of baseless legal claims: it cast unwarranted doubt on the results of Michigan's free and fair elections. Indeed, it undermined the faith of millions of Americans in our democracy and the legitimacy of our President. As a direct result of Mr. Hagerstrom's efforts and the allied efforts of other unethical attorneys, the unhinged conspiracy theories and untrue statements surrounding the 2020 presidential election gained a patina of unearned respectability.

It is not unheard of for lay individuals who are disappointed by the result of the election to claim that the election is "rigged" and the winner illegitimate. Those claims might even have some limited, negative impact. But when untruths of that nature are spread in courts of law by licensed attorneys, the impact and the resultant harm are exponentially greater.

Here, a direct line can be drawn from the fabrications of Mr. Hagerstrom and his associates to the unprecedented insurrection at the Capitol Building in Washington D.C. on January 6 that sought to topple our national government. Every election results in millions of voters disappointed that their preferred candidate lost. But what made this year's presidential transition so volatile and violent were the false accusations of widespread election fraud that spurred on many disappointed Trump voters into believing that the election was tainted and the result was illegitimate. And because those untruths were spread by attorneys, not just by a candidate or a candidate's supporters, they won particular credence. Thankfully, they did not culminate in the dismantling of our national government. But they did force Congress to delay the certification, cause serious property damage, and contribute to the death of seven people, including two U.S. Capitol Police officers and a D.C. Police officer. And regrettably, they end our nation's 220-year uninterrupted streak of peaceful transfers of presidential power.

And why did the imprimatur of licensed attorneys such as Mr. Hagerstrom lend credence to these false allegations? Because the public knows that attorneys are bound by both oath and ethical rules. Therefore, the public presumes that attorneys possess the character and fitness necessary to practice law. Accordingly, the public should be able to expect that when an attorney makes a public statement

or signs a complaint, that attorney's factual allegations are either true or rooted in a good-faith belief as to their truth. And the public ought to be able to expect that the attorney's legal claims are at least colorable, if not meritorious. Neither of those were true with respect to Mr. Hagerstrom. His factual allegations were false and his claims were not colorable. He violated both his oath and the ethical rules by which he is bound.

Attorneys swear an oath to "support the Constitution of the United States and the Constitution of the State of Michigan," to use "such means as are only consistent with truth or honor," and to "never seek to mislead the judge or jury by any artifice or false statement of fact or law[.]" In filing the *King* complaint, Mr. Hagerstrom used means that were inconsistent with truth, and he sought to mislead a federal judge through those false statements.

Mr. Hagerstrom also violated multiple ethical rules when he filed that complaint. To begin, he violated **Rule 3.1 of the Michigan Rules of Professional Conduct**. That rule provides that "[a] lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous." Mr. Hagerstrom violated Rule 3.1 when he signed the frivolous *King* complaint and submitted it to the court. The district court's denial of the plaintiffs' motion for a preliminary judgment, 2020 WL 7134198, was sweeping in its scope and eliminated all possible contention that the claims had any colorable value. The district court held that the claims violated the Eleventh Amendment, *id.* at \*5, that they were moot, *id.*, that they were barred by laches, *id.* at \*7, that the plaintiffs lacked standing, *id.* at \*9–11, and that the claims were utterly meritless, *id.* at \*11–13. With respect to the merits, the court held that the claims Mr. Hagerstrom sought to raise under the Elections and Electors Clause were only "state law claims disguised as federal claims," *id.* at \*11, and noted that plaintiffs did not cite a single case supporting the theory that the federal court could review them, *id.* at \*12. And as for the claims under the Equal Protection Clause, the court noted that Mr. Hagerstrom provided "nothing but speculation and conjecture" in support, and that the factual allegations raised, as weak as they were, were also completely disconnected from their claim for relief. *Id.* at \*12.

Again, it is worth recalling Judge Parker's assessment that the complaint had been filed not to achieve relief but to undermine the "People's faith in the democratic process and their trust in our government." *Id.* at \*13. This is not only an ethically improper reason to file a lawsuit, but under these circumstances, a dangerous one.

There was no non-frivolous basis for the complaint he filed on November 25, 2020, and Mr. Hagerstrom violated Rule 3.1 when he filed it.

Mr. Hagerstrom also violated **Rule 3.3(a)(1) of the Michigan Rules of Professional Conduct**, which provides that “[a] lawyer shall not knowingly make a false statement of material fact or law to a tribunal[.]” and **Rule 3.3(a)(3)**, which provides that “[a] lawyer shall not offer evidence that the lawyer knows to be false.” The complaint he filed in *King* violated these rules because it was based on reams of known falsehoods intended to deceive the courts and overturn a free and fair election.

For example, Mr. Hagerstrom and his team submitted a pseudonymous affidavit from one “Spyder,” who falsely claimed to be a military intelligence analyst. Fortunately, through the incompetence of Mr. Hagerstrom’s team, “Spyder’s” name was revealed, and it was learned that he was no intelligence analyst at all, but instead a former soldier who was dismissed from military intelligence training.

Mr. Hagerstrom and his team also submitted the affidavit of Russell Ramsland, who made numerous false statements about the election. Ramsland blamed Dominion voting machines for an error in the election results in Antrim County, Michigan, even though it is known that the error in that county (which was found and corrected) was not a result of software error or fraud, but rather, simple human error. Ramsland also made false statements about turnout rates in certain Michigan communities, claiming for example a 781.91% turnout rate in North Muskegon, where the actual turnout rate was 78%, and 460.51% in Zeeland Charter Township, where the actual rate was 80%.

Also attached to the complaint as a declaration was a bizarre piece of short fiction (again, with the author’s name redacted) that attempted to establish that the use of Dominion software is necessarily fraudulent because Smartmatic (a Dominion competitor) was allegedly involved in rigging elections for Hugo Chavez and Nicolas Maduro in Venezuela, and because Smartmatic and Dominion have previously done business. Dominion has filed a defamation lawsuit against Mr. Hagerstrom’s co-counsel, Sidney Powell, personally, alleging that these and other statements that she made in *King* lawsuit, in other lawsuits in other states, and in public statements are untrue and defamatory. Although that lawsuit was not against Mr. Hagerstrom and has yet to be resolved, the salient point here with respect to Mr. Hagerstrom is that he signed the *King* complaint without ensuring that the complaint’s factual contentions about Dominion had evidentiary support or would likely have evidentiary support after further investigation or discovery.

Mr. Hagerstrom also alleged that Republican challengers were denied access to a location where votes were being counted in Wayne County, that there was supposedly improper “pre-dating” of absentee ballots, and that ballots were being counted multiple times—all the while knowing that these were false statements

because they had already been debunked in a previous lawsuit, *Constantino v. Detroit*, in our state court.

All of these false statements helped fuel the fire of the dangerous conspiracy theories that have undermined faith in the 2020 election. No responsible attorney would have spread these untruths, much less submit them to a court of law. Mr. Hagerstrom violated Rules 3.3(a)(1) and (3) when he did so.

Lastly, Mr. Hagerstrom violated **Rule 8.4 of the Michigan Rules of Professional Conduct**. That rule provides in part that “[i]t is professional misconduct for a lawyer to: (a) violate or attempt to violate the Rules of Professional Conduct, . . . (b) engage in conduct involving dishonesty, fraud, deceit[, or] misrepresentation, . . . where such conduct reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer; [or] (c) engage in conduct that is prejudicial to the administration of justice[.]” The dishonest and disgraceful litigation described above violated these rules. Mr. Hagerstrom brought frivolous claims that were barred by constitutional, statutory, and equitable defenses, and that were supported by false statements and wild speculation.

In sum, Mr. Hagerstrom has abused the trust the State Bar of Michigan placed in him. He filed a complaint based on falsehoods, used his law license in an attempt to disenfranchise Michigan voters and undermine the faith of the public in the legitimacy of the recent presidential election, and lent credence to untruths that led to violence and unrest. In doing so, he violated both his attorney oath and the rules of professional conduct that govern the practice of law—rules that “evidence a commitment to high standards and behavior beyond reproach.” *In re Grimes*, 414 Mich 483, 494 (1982). It is beyond all peradventure that Mr. Hagerstrom has failed to live up to those high standards; his ethical violations bring disrepute on all attorneys, jeopardize the public’s confidence in the State Bar and the legal system, and compromise an important foundation of our civil society and the very bulwark of our democratic institutions. His violations are irredeemable because, as Justice Frankfurter so eloquently stated in his concurrence in *Schwartz v. Board of Bar Exam. of New Mexico*, 353 U.S. 232 (1957), “[i]t is a fair characterization of the lawyer's responsibility in our society that he stands ‘as a shield,’ to quote Devlin, J., in defense of right and to ward off wrong. From a profession charged with such responsibilities there must be exacted those qualities of truth-speaking, of a high sense of honor, of granite discretion, of the strictest observance of fiduciary responsibility, that have, throughout the centuries, been compendiously described as ‘moral character.’”

Mr. Hagerstrom is unfit to practice law and should be disbarred.

Respectfully submitted,



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Gretchen Whitmer

Governor of the State of Michigan



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Dana Nessel

Attorney General of the State of Michigan



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Jocelyn Benson

Secretary of State of the State of Michigan