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How Can Rudy Giuliani Still Be Trump's Lawyer?

By [Joel Cohen](#)

Isn't it just possible that Rudy Giuliani could ultimately be viewed as a co-conspirator (assuming improper or illegal acts were committed) so that ethically he cannot and should not be representing "his client"--the president of the United States.

No, this is not about the fact that some of Giuliani's tactics seem bizarre and destined, albeit unintentionally, to hurt the president-who, surprisingly, doesn't seem to care. And it's not about the fact that Giuliani often seems to be outright lying to the media when he purports to be representing the president and pushing his agenda.

Rather, it is apparent that, at a minimum, Giuliani is a critical witness to events involving "the call" to the Ukrainian president. Bad enough, but here is the real thing. Isn't it just possible that Giuliani could ultimately be viewed as a co-conspirator (assuming improper or illegal acts were committed) so that *ethically* he cannot and should not be representing "his client"-the president of the United States.

How difficult is it to imagine that, even if Trump is left alone or successfully staves off impeachment, a future prosecutor will be able to put forth a viable-indeed, indictable-claim against Giuliani? Or maybe even that, for a variety of reasons, some future prosecutor would prefer to have Giuliani (and not Trump) in his cross-hairs. Not difficult at all. And if that is the case, just how does Giuliani continue to appear, scream, posit and argue the president's position on every news show in America.

Giuliani now has a lawyer whose goal, one imagines, is largely to keep Giuliani off Congress' witness stand-he'll certainly not control Giuliani's TV *persona*. But wouldn't any lawyer recognize the problem in Giuliani's attempt to hide behind the obligations of privilege while at the same time trying to put the president's best foot forward?

Especially given that a lawyer with only Giuliani's interest at heart will well know that Giuliani's antics might end with the president kicking Giuliani in the shins to protect the most important person in the whole world and in his own eyes- himself? So, at the end of the day, just who

does Giuliani protect-himself or DJT? Conflict city, don't you think?

Sure, Giuliani is entitled as a lawyer for a client, assuming he doesn't give false testimony to the Congress if it gets to that, to take a bullet for the president (the client) or at least try to take the weight for all that the president has done regarding Ukraine. He can-and may if push comes to shove-tell Congress, and maybe the world, that he gave Trump "advice of counsel" in an attempt to legally justify whatever it was that the president said on "the call" or preceding it. He can refuse to testify, on fifth amendment grounds, if subpoenaed, with the strategic hope of drawing fire away from the president.

He can deliver absolutely nutty TV performances as the president's "advocate" in order to scare the Congress away from subpoenaing him, lest he replicates the public spectacle choreographed by Corey Lewandowski. He can do all of this on behalf of his client, the president, even though he may put himself in harm's way. It's hardly unethical to "go to the wall" for a client, as long as the lawyer isn't hurting *another client* in the process. Indeed, he can ethically "commit political suicide," to coin a phrase, to aid the client as long as he's not obstructing justice.

However, doesn't a lawyer-albeit unconsciously-run the risk of causing harm to his client when a reflexive effort at self-protection may potentially lie just around the corner? Now, from the client's perspective, the president has other lawyers representing him alongside Giuliani, such as Jay Sekulow, who certainly can independently advise the president and ensure that he's receiving unconflicted advice.

But is that enough? Do we actually think-does President Trump actually think-that Giuliani carefully vets what comes to his mind each and every time he freewheels on television? What happens when in his "freewheeling" he somehow becomes worried about his own freedom (as opposed to that of his client)?

Consider the risk to the client when the lawyer is worried, just in the back of his head (or even unconsciously), that he himself might be charged, or at least become exposed as a potential subject of disciplinary proceedings. Could that be the reason, Giuliani publicly brought the State Department into the picture basically arguing, without saying so directly, that he was operating with the imprimatur of the Trump Administration-does that somehow help the president? Or himself?

At bottom, does Giuliani have an ethical duty to withdraw as Trump's lawyer? Maybe so. But for now at least, there will be no one to challenge his status as Trump's lawyer. The Congress won't, the courts have nothing pending before them as in litigation- if they did they might conduct a conflict hearing or a "Come To Jesus" moment urging "the client" to consider an alternative counsel. And, finally, it seems that Trump seems to like it just fine having a conflicted Rudy as his lawyer. After all, he's hardly averse to shouting "You're Fired" when he wants.

Is it possible that the disciplinary authorities in New York or Washington have received a complaint, or have opened a file about Giuliani *sua sponte*? Who knows? To their credit, the authorities typically conduct such inquiries confidentially, possibly without the subject of the complaint even knowing about it for a while-and even when the conduct of a presidential adviser might be implicated. Do we expect that Giuliani might step aside on his own, given that he is unambiguously a very smart lawyer and surely recognizes that a conflict exists? Not a chance!

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