August 3, 2017

Office of Disciplinary Counsel
4000 S. Sherwood Forest Blvd., Suite 607
Baton Rouge, Louisiana 70816

Re: Request for Investigation of the Orleans Parish District Attorney’s Office

To the Office of Disciplinary Counsel:

The Southern Poverty Law Center (“SPLC”) writes to request that the Office of Disciplinary Counsel investigate the Orleans Parish District Attorney’s Office and District Attorney Leon Cannizzaro, Jr.

District Attorney Cannizzaro and the assistant district attorneys in his office have admitted to manipulating the judicial process since taking office in 2009 by fabricating documents to appear as subpoenas and serving them upon members of the public. The so-called “subpoenas” threatened fines and imprisonment if the targeted member of the public failed to come to the District Attorney’s Office and answer questions posed by assistant district attorneys or their staff. Rather than following the law—which requires court authorization for the issuance of subpoenas—the District Attorney’s Office routinely sent these fake subpoenas to witnesses without notifying any court. In so doing, District Attorney Cannizzaro and unknown members of his staff who acted under his supervision betrayed the public trust and violated their ethical obligations under the Louisiana Rules of Professional Conduct.

The Office of Disciplinary Counsel is charged with investigating “all information coming to the attention of the agency which, if true, would be grounds for discipline.”¹ This broad mandate to investigate misconduct stems from the crucial role of attorney discipline as a means of protecting the public, preserving the integrity of the legal system, ensuring the administration of justice,

¹ La. S. Ct. R. XIX, sec. 4.
deterring future unethical conduct, and rehabilitating the offending attorneys.\footnote{The Purposes of Attorney Discipline, La. Att’y Disciplinary Bd., https://www.ladb.org/Discipline/Purpose.aspx.} In the instant case, these considerations are particularly acute given the crucial role of prosecutors in seeking truth, administering justice, and protecting the public. Without a comprehensive investigation into the scope of this misconduct throughout the District Attorney’s Office, the public will be deprived the opportunity to know whether prosecutors are upholding the law and following the ethical rules. Moreover, investigating and sanctioning the unethical conduct will deter prosecutors across the state from engaging in similar misconduct and protect the integrity of the legal profession.

I. Summary of Complaint

SPLC submits this ethics complaint against District Attorney Cannizzaro and unknown assistant district attorneys in his office for violations of Louisiana Rules of Professional Conduct (“Rule”) 4.1(a) and 5.1, in addition to possible violations of other rules. The District Attorney admits that numerous fake subpoenas have issued from his office throughout his tenure but refuses to divulge which assistant district attorneys were involved in this unethical conduct.\footnote{As Exhibit A indicates, Assistant District Attorney Laura Rodrigue has authorized such a fake subpoena in at least one instance. Mr. Cannizzaro’s office has been ordered by Civil District Court Judge Nakisha Ervin-Knott to reveal the names of all prosecutors who authorized the issuance of these “fake subpoenas.” Della Hasselle, Judge Gives Orleans DA Leon Cannizzaro’s Office Deadline to Hand Over “fake subpoena” Info,” The New Orleans Advocate (July 11, 2017, 9:10 AM), http://www.theadvocate.com/new_orleans/news/courts/article_bfd6b9b2f8.html; see also Ex. D (judgment). Mr. Cannizzaro is appealing this ruling and the proceedings have been stayed in the meantime. See Ex. E (motion for suspensive appeal). All articles referred to in this letter are attached as Exhibit F.} We respectfully request that this office utilize its broad regulatory powers in order to:

1. Investigate disciplinary action against the District Attorney for his apparent violation of Rule 5.1;
2. Investigate the scope of his office’s practice of issuing fake subpoenas so as to identify those assistant district attorneys who authored and/or authorized the issuance of such documents in violation of Rule 4.1(a); and
3. Bring disciplinary action against them accordingly.

The Office of Disciplinary Counsel has unique authority to ensure that the experience of witnesses manipulated and intimidated by the District Attorney is never repeated, and that attorneys who act as an arm of the government are not doing so in violation of ethical rules. A comprehensive investigation is critical to protect the public, to protect the integrity of the legal system, and to deter these or other prosecutors from committing the same misconduct.

II. Southern Poverty Law Center’s Interest

The Southern Poverty Law Center has worked to protect and advance civil rights in the Deep South for over four decades. SPLC advocates for the reform of the juvenile and criminal justice systems so they operate fairly and equitably; for the dignity and humanity of those interacting with these systems; and for a reduction in the prison population. Furthering this mission is of particular importance to SPLC in Louisiana—the prison capitol of the world.
Part of SPLC’s criminal justice work involves ensuring that prosecutors are held accountable for misconduct. Prosecutorial misconduct occurs when a prosecutor breaks a law or a code of professional ethics in the course of a prosecution. In *Berger v. United States*, Justice Sutherland explained that prosecutorial misconduct means “overstepp[ing] the bounds of that propriety and fairness which should characterize the conduct of such an officer in the prosecution of a criminal offense.” SPLC brings this complaint to ensure that prosecutorial misconduct is addressed by the Office of Disciplinary Counsel when it arises.

### III. Uncontroverted Facts

**A. Subpoenas Are, By Definition, Orders Issued By A Court.**

A subpoena is “a court’s written order” “commanding a person to appear before a court or other tribunal, subject to a penalty for failing to comply.” Subpoenas declare the time and place at which a person must appear, exerting control over that person with no regard for his schedule or access to transportation. Subpoenas are powerful instruments that must be regulated by a neutral magistrate so that they are not abused. Because the so-called “subpoenas” that the District Attorney’s Office sent to witnesses were not orders issued by any court, the label of “subpoena” placed on these documents is patently false and intentionally misleading.

**B. By Law, District Attorneys May Only Seek to Have Subpoenas Issued With Court Authorization.**

There is no mechanism under law that allows district attorneys to “subpoena” witnesses to speak with them outside of court without going through a judge. Under Louisiana Code of Criminal Procedure Article 66 (“Article 66”), a district attorney, after “setting forth reasonable grounds therefor,” can ask a judge to order the clerk of court to issue a subpoena to a witness ordering his appearance at a designated time and place to speak to the district attorney’s office. It is the court, not the district attorney’s office, which determines whether such documents may issue. It is also the clerk of court, not the district attorney’s office, who issues such subpoenas. Article 66 creates this limitation on the issuance of the subpoenas explicitly to prevent “possible abuse by the district attorney.”

**C. The Orleans Parish District Attorney’s Office Routinely Lied About Individuals’ Obligation To Speak To District Attorneys and the Penalties for Failing to Do So.**

The Orleans Parish District Attorney’s Office has routinely and knowingly falsified “subpoenas” and served them upon witnesses without any court oversight. On April 26, 2017, a local media outlet reported that it had discovered numerous instances of the Orleans Parish District

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4 295 U.S. 78, 84 (1935).
6 *Subpoena*, Black’s Law Dictionary, (10th ed. 2014);
7 *See* Ex. A.
Attorney’s Office issuing fake subpoenas to compel witnesses to speak with prosecutors outside of court.9

A copy of one such “subpoena” is attached to this complaint.10 It is titled “SUBPOENA,” and warns that “A FINE AND IMPRISONMENT MAY BE IMPOSED FOR FAILURE TO OBEY THIS NOTICE.”11 It also claims to be issued pursuant to Article 66,12 which, in light of the failure to seek judicial permission for its issuance, is simply not true and is intentionally misleading. Witnesses in receipt of this document have been intimidated and misled into believing that they are under a legal obligation to appear as “commanded” or else face punishment.13

D. The District Attorney’s Office Now Acknowledges Ethical Violations but Continues to Resist Transparency and the Voluntarily Regulation of This Practice.

The Office of Disciplinary Counsel should be particularly concerned with the practices of a district attorney’s office that appears unwilling or unable to recognize when its attorneys are acting unethically or when they are obligated to operate with transparency. For example, even though Assistant District Attorney Laura Rodrigue withdrew a fake subpoena in November 2016 on the grounds that it was illegally issued,14 the Office sent a fake subpoena to at least one other witness several months later.15 In the Spring of 2017, when the practice of issuing “fake subpoenas” was made public through media reports, the District Attorney’s Office defended it. According to the Office’s spokesman Chris Bowman, the District Attorney did “not see any legal issues” with serving these fake subpoenas.16 Rather, in Bowman’s words, the practice is “no different than if we just put a letter out [to a witness] on our letterhead.” It was not until after Mr. Bowman was told that legal experts called the practice “illegal” that the Office announced it would stop the practice of issuing the fake subpoenas.17 Eventually District Attorney Cannizzaro publicly admitted his responsibility for allowing the practice to occur in his office. He told a television journalist:

I certainly take responsibility for the fact that these documents, these notices, were labeled a subpoena under our administration [. . .] It was improper, it was incorrect for us to label those notices as a subpoena, that was incorrect. That was improper, and I take responsibility for that.18

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10 See Ex. A.
11 See id.
12 See id.
13 See Maldonado, supra note 9.
14 See id.
15 See id. This “fake subpoena” was authorized by Assistant District Attorney William Dieters. See Ex. B.
16 See Maldonado, supra note 9.
17 See id.
Even after that admission, however, District Attorney Cannizzaro attempted to down-play the 
violation by insisting that “there are no legal consequences” if a person failed to respond to the 
fake subpoena.19 It was later discovered that his office had sought the arrest of at least one person 
who had failed to respond to the misleading document.20 Additionally, and paradoxically, 
District Attorney Cannizzaro tried to explain away the improper use of the word “subpoena” on 
the document by saying “the term says, listen, if you don’t respond, there may be a consequence 
for your failure to respond.”

District Attorney Cannizzaro was sued on May 15, 2017 by the American Civil Liberties Union 
for violating Louisiana’s Public Records Law by failing to disclose information about the “fake 
subpoenas.”21 A civil district court judge has ruled that District Attorney Cannizzaro’s office is 
obligated to identify the prosecutors who engaged in this practice.22 District Attorney 
Cannizzaro’s office is appealing this ruling.23

The District Attorney’s Office has admitted—in an apparent attempt to deflect blame from the 
Cannizzaro administration—that the practice of issuing fake subpoenas has been going on for 
decades.24 Rather than excusing the District Attorney’s conduct, this admission should elevate 
the Office of Disciplinary Counsel’s concerns given the apparent depth and breadth of this 
practice and the indications that many prosecutors have been involved in perpetuating it.

The Office of Disciplinary Counsel, whose purpose is to protect the integrity of the legal system 
and ensure the ethical practice of law, has the authority and responsibility to initiate an 
investigation into the District Attorney’s Office’s practices and to dispense appropriate discipline 
so as to deter further unethical conduct.25 These uncontroverted facts merit an immediate 
investigation.

IV. Statement of Violations of the Louisiana Rules of Professional Conduct

Lawyers are subject to discipline when they violate or attempt to violate the Rules of 
Professional Conduct; knowingly assist or induce another to do so; or do so through the acts of 
another, as when they request or instruct an agent to do so on the lawyer’s behalf.26 It is hereby 
requested that the Office of Disciplinary Counsel investigate the Orleans Parish District Attorney 
and his office for violations of the following rules, and impose discipline as appropriate.

A. Rule 4.1

19 Charles Maldonado, Prosecutor tried to jail victim of alleged domestic violence after she didn’t obey fake 
subpoena-to-seek-arrest-warrant-for-victim-of-alleged-domestic-violence.
20 See id.
21 See Ex. C.
22 See Ex. D.
23 See Ex. E.
24 Charles Maldonado, Will prosecutors who sent fake subpoenas face any consequences?, The Lens (May 3, 2017, 
8:21 PM), http://thelensnola.org/2017/05/03/will-prosecutors-who-sent-fake-subpoenas-face-any-consequences; see 
also Maldonado, supra note 9.
26 La. R. Prof’l Conduct R. (hereinafter “Rule”) 8.1; 8.4.
Rule 4.1(a) provides that in the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person. The Orleans Parish District Attorney’s Office admits it routinely has fabricated documents intended to appear as subpoenas for witnesses, falsely informing them that they were obligated to appear and provide information to the District Attorney’s Office or face a fine and imprisonment.\(^{27}\) By routinely issuing its own fake subpoenas, the Orleans Parish District Attorney’s Office knowingly made false statements of material fact or law to third persons in the course of its representation of Orleans Parish.

B. Rule 4.3

District Attorney Cannizzaro and the attorneys in his office have violated Rule 4.3, stating that when the lawyer “knows or reasonably should know that the unrepresented person misunderstands the lawyer’s role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.” Of course, District Attorney Cannizzaro and the attorneys in his office did the opposite—they engaged in deliberate deception so that witnesses would misunderstand their obligations to talk to the District Attorney’s Office.

C. Rule 5.1

District attorneys are required to make reasonable efforts to ensure that their offices have in effect measures giving reasonable assurance that all lawyers in the office conform to the Rules of Professional Conduct.\(^{28}\) In fact, supervising prosecutors bear a heightened obligation to ensure that attorneys under their supervision do not violate ethical rules, because, “[u]nlike other litigating lawyers, prosecutors are not merely advocates and officers of the court, but also administrators of justice who have a duty to seek justice, and not merely to convict.”\(^{29}\)

A lawyer holding a supervisory position over other lawyers undertakes certain responsibilities and liabilities. The Louisiana Bar Association’s Office of Disciplinary Counsel has dispensed punishment upon those supervising attorneys who allow ethical transgressions to occur in their organizations. For instance, discipline resulted when a lawyer relinquished legal responsibilities to employees resulting in fraudulent real estate transactions\(^{30}\) and when a lawyer failed to supervise a subordinate lawyer and failed to report that lawyer’s egregious ethical violations.\(^{31}\)

Throughout District Attorney Cannizzaro’s tenure as district attorney, and apparently for decades before that, prosecutors in Orleans Parish have engaged in a pattern and practice of deceit that violates the Rules of Professional Conduct and continues to go undisciplined.

Upon information and belief, District Attorney Cannizzaro failed to implement any meaningful supervisory protocols, such as training or performance monitoring, to ensure that prosecutors under his supervision would not engage in the unethical conduct described herein. Given the

\(^{27}\) See Murphy, \textit{supra} note 18.

\(^{28}\) See Rule 5.1.

\(^{29}\) Annotations to Rule 3.8 (internal quotation marks and citation omitted).

\(^{30}\) See \textit{In re Trahant}, 2012-1435, p. 13 (La. 12/14/12); 108 So. 3d 67, 75 (discipline).

\(^{31}\) See \textit{In re Tolchinsky}, 99-1742 (La. 9/3/99); 740 So. 2d 109 (disbarment).
admitted recurrence of this unethical conduct over a long period of time, \(^{32}\) it is clear that District Attorney Cannizzaro abdicated his ethical duty to ensure meaningful oversight of the prosecutors in his office.

**D. Potential Violations of Rules 3.3, 3.4, and 8.4**

Because the scope of the Office’s practice is not known, it cannot definitively be said whether violations of additional Rules have occurred. The Office of Disciplinary Counsel should investigate the District Attorney’s Office in order to determine the extent of the violations.

District Attorney Cannizzaro and assistant district attorneys in his office may have violated Rule 3.3, mandating a duty of candor to the tribunal. District Attorney Cannizzaro’s office prepared and presented cases that relied on witnesses whom it tricked into talking to the state. Upon information and belief, District Attorney Cannizzaro and his officers did not clarify this with the court.

District Attorney Cannizzaro and his assistant district attorneys have apparently used this practice to issue fake subpoenas after charges have been instituted (as opposed to during a pre-charging investigation). \(^{33}\) Issuing fake subpoenas post-charging arguably presents a violation of Rule 3.4 by unilaterally creating a system of *ex parte* subpoenas, in addition to violating Article 66 on its face. \(^{34}\) Under Rule 3.4, attorneys are obligated not to, *inter alia*, unlawfully obstruct another party’s access to evidence or knowingly disobey an obligation under the rules of a tribunal. After a defendant is charged, he has rights to know about the evidence and witnesses the prosecutor intends to present. Code of Criminal Procedure Article 963 requires a *judge* to determine whether or not orders should be issued *ex parte*. Through issuing fake subpoenas post-indictment the District Attorney may violate Rule 3.4 by knowingly violating the terms of Article 963 and unlawfully obstructing the defendant’s access to evidence.

Rule 8.4 precludes an attorney from “engag[ing] in conduct involving dishonesty, fraud, deceit or misrepresentation.” Professional “misconduct” includes conduct “involving dishonesty, fraud, deceit or misrepresentation,” even if the conduct is not criminal in nature. For example, a lawyer engages in misconduct by improperly backdating stock certificates in the course of representing a client. \(^{35}\) A violation of Rule 8.4(c) often entails a violation of one or more additional Rules. \(^{36}\) The totality of the District Attorney’s Office’s conduct may amount to a violation of Rule 8.4.


\(^{33}\) See, e.g., Maldonado, *supra* note 9 (claiming that witnesses received subpoenas in the immediate days before trial).

\(^{34}\) See *State v. Rachal*, 362 So. 2d 737, 739-40 (La. 1978) (subpoena power granted district attorney under Article 66 was for purposes of pre-charge investigation of offense and was not intended to afford prosecutor examination of exculpatory evidence secured by defendant, after prosecution has been instituted).

\(^{35}\) See *In re Sealed Appellant*, 194 F.3d 666, 672 (5th Cir. 1999).

\(^{36}\) See, e.g., *In re Hackett*, 2010-1013, p. 9 (La. 9/3/10); 42 So. 3d 972, 978; *In re McKee*, 2007-1381 (La. 2/1/08); 976 So. 2d 152; see also *In re Calahan*, 2006-0005 (La. 5/17/06); 930 So. 2d 916 (disbarring lawyer for violations of rules 3.3, 4.1 and 8.4(c), among other rules violations).
V. Violation of American Bar Association Standards

In addition to violating the Louisiana Rules of Professional Conduct, District Attorney Cannizzaro and the attorneys in his office who engaged in the practice of issuing fake subpoenas have also violated national standards by attempting to force third parties to communicate with the District Attorney’s Office. The American Bar Association (ABA) has stated that “[a] prosecutor should not secure the attendance of persons for interviews by use of any communication which has the appearance or color of a subpoena or similar judicial process unless the prosecutor is authorized by law to do so.”

In commentary to that directive, the ABA wrote:

There is evidence that some prosecutor offices have occasionally scheduled persons for interviews by means of documents that in format and language resemble official judicial subpoenas or similar judicial process even though they lack subpoena power in these instances. Such practices are improper and amount to a subversion and usurpation of judicial power . . . . [A] prosecutor’s communication requesting a person to appear for an interview should be couched in terms of request; it should not simulate a process or summons that the prosecutor does not have the power to issue.

Courts across the country, too, have long recognized the degree to which it is entirely unethical to send a judicial-looking “summons” to prospective witnesses. In United States v. Thomas, for example, the court held that it is improper for a prosecutor to send any document that could be construed by a layperson to compel attendance at a witness conference. The court noted that the precise practice at issue had been labeled “unprofessional conduct” by the American Bar Association.

The Thomas court stated: “The ‘summons’ here in question is an offensive document under the A.B.A. Standards . . . and although these standards are not technically binding on the Court, we are convinced that this ‘summons’ is a usurpation of the judicial power.” The court ordered: “that the United States Attorney shall cease sending to prospective witnesses whom he wishes to interview before the trial date any form which includes the word ‘Summons’ or any derivative thereof or which in its format and language resembles an official judicial subpoena or similar judicial process or which conveys the impression that non-appearance is subject to sanction.”

38 Supra at 51.
40 Id. at 529. The D.C. Bar subsequently issued an ethics opinion coming to the same conclusion. D.C. Bar, Formal Op. 32 (March 29, 1977).
41 Id. Courts have likewise disavowed the use of trial subpoenas to compel interviews with prosecutors. See, e.g., United States v. LaFuente, 991 F.2d 1406, 1411 (8th Cir. 1993) (“The government may not use trial subpoenas to compel prospective trial witnesses to attend pretrial interviews with government attorneys.”); United States v. Keen,
As noted by the *Thomas* court, violations of the ABA standards are not binding on the judiciary. They also do not bind the Louisiana Office of Disciplinary Counsel. Nonetheless, the condemnation by the nation’s oldest and largest professional attorney association of the practices engaged in by District Attorney Cannizzaro and attorneys in his office indicates the harsh criticism these practices merit and provides strong support for this request for investigation.

VI. **Conclusion**

“[A] private person has the right to expect that the government, when acting in its own name, will behave honorably. When a government agent presents himself to a private individual, and seeks that individual’s cooperation based on his status as a government agent, the individual should be able to rely on the agent’s representations.”  

Investigative subpoenas “provide a ‘vast potential, if not temptation, for prosecutors . . . to crush personal liberties and rights of privacy.’”  

The District Attorney’s Office has violated the public’s trust and failed to meet the standards required of Louisiana lawyers.

Accordingly, for the reasons set forth above, we respectfully request that the Office of Disciplinary Counsel investigate this matter, and impose discipline.

Sincerely,

Jared Fletcher Davidson, Esq.

Enclosures