



January 31, 2024

VIA ELECTRONIC MAIL

Mr. Hamilton P. Fox, III, Disciplinary Counsel
Ms. Julia Porter, Deputy Disciplinary Counsel
Office of Disciplinary Counsel
District of Columbia Court of Appeals
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Washington, DC 20001
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Request for Investigation of District of Columbia Bar Member Robert Hunter Biden for Engaging in Professional Misconduct Contrary to District of Columbia Rule of Professional Conduct 8.4.

Dear Mr. Fox and Ms. Porter,

America First Legal Foundation (“AFL”) is a national, nonprofit legal foundation working to promote the rule of law, prevent executive overreach, protect due process and equal protection, and educate Americans about the individual rights guaranteed under the Constitution and laws of the United States. The undersigned is a member in good standing of the District of Columbia Bar.

I. Background

Robert Hunter Biden is a member in good standing of the District of Columbia Bar.¹

A. The Delaware indictment and diversion agreement

On or about September 14, 2023, Mr. Biden was indicted in the United States District Court for the District of Delaware on two counts related to knowingly making false statements and one count of unlawful firearm possession. According to the indictment:

On or about October 12, 2018, in the District of Delaware, the defendant, Robert Hunter Biden, in connection with the acquisition of a firearm, that is, a Colt Cobra 38SPL revolver with serial number RA 551363 from

¹ See *D.C. Bar - DisplayDirectoryMemberships*, <http://tinyurl.com/3war7m46> (last visited Jan. 30, 2024).

Company 1, licensed under the provisions of Chapter 44, Title 18, United States Code, knowingly made a false and fictitious written statement, intended and likely to deceive that dealer with respect to a fact material to the lawfulness of the sale of the firearm under the provisions of Chapter 44, Title 18, United States Code, in that defendant, Robert Hunter Biden, provided a written statement on Form 4473 certifying he was not an unlawful user of, and addicted to, any stimulant, narcotic drug, and any other controlled substance, when in fact, as he knew that statement was false and fictitious.

....

On or about October 12, 2018, in the District of Delaware, the defendant, Robert Hunter Biden, in connection with the acquisition of a firearm, that is, a Colt Cobra 38SPL revolver with serial number RA 551363, knowingly made a false statement and representation, to Company 1, licensed under the provisions of Chapter 44, Title 18, United States Code, with respect to information required by the provisions of Chapter 44, Title 18, United States Code, to be kept in the FFL holder's records, in that defendant, Robert Hunter Biden, certified on the Form 4473 that he was not an unlawful user of, and addicted to, any stimulant, narcotic drug, and any other controlled substance, when in fact, as he knew, that statement was false and fictitious.

....

On or about October 12, 2018, through on or about October 23, 2018, in the District of Delaware, the defendant Robert Hunter Biden, knowing that he was an unlawful user of and addicted to any stimulant, narcotic drug, and any other controlled substance as defined in Title 21, United States Code, Section 802, did knowingly possess a firearm, that is, a Colt Cobra 38SPL revolver with serial number RA 551363, said firearm having been shipped and transported in interstate commerce.

United States v. Biden, Indictment ¶¶ 7, 9, 11, ECF No. 40, Case No. 1:23-cr-00061-MN (D. Del. filed Sept. 14, 2023).

Mr. Biden voluntarily entered into a Diversion Agreement in which he represented the following:

Biden acknowledges and agrees that the Statement of Facts (Attachment A), is truthful and accurate.

Biden agrees that he shall not, himself or through any agent or representative, make any statement, in litigation or otherwise,

repudiating or contradicting the Statement of Facts (Attachment A) associated with this Agreement.

United States v. Biden, Ex. 1, Diversion Agreement ¶¶ 11, 12, ECF No. 60-1, Case No. 1:23-cr-00061-MN (D. Del. filed Dec. 11, 2023).

The Statement of Facts (Attachment A) states as follows:

Robert Hunter Biden (“Biden”) began using crack and powder cocaine in or around October 2016, became a habitual user in 2017, and continued to use frequently and regularly through approximately May 2019. During that time, he enrolled in multiple in- and outpatient rehabilitation programs with varying degrees of temporary success but did not achieve long-term sobriety. Instead, his drug use overall escalated.

Biden moved to California in the spring of 2018, where he used crack cocaine on a regular basis, at times as frequently as every 15 minutes. He enrolled in an additional rehabilitation program in California from August 16–27, 2018, and then lived with a sober companion from August 27–September 2, 2018. He relapsed shortly thereafter, and his crack cocaine use continued when he returned to the East Coast in the fall of 2018.

On October 12, 2018, Biden visited a federally licensed firearms dealer in Wilmington, Delaware. He purchased a Colt Cobra 38SPL revolver with serial number RA 551363 (the “Firearm”), along with several other items, including an HKS speed loader for the Firearm and a box of ammunition.

When he purchased the Firearm, Biden completed an ATF Form 4473, which required him to answer the question, “Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance?” Biden answered “no,” even though he was a user of, and addicted to, crack cocaine at the time. Biden certified that his “answers in Section A” were “true, correct, and complete,” and that he understood that a person who answers “yes” to that question is “prohibited from purchasing or receiving a firearm.”

Biden possessed the Firearm from October 12–23, 2018. During that time, he purchased and used crack cocaine regularly. On October 23, 2018, the Firearm was found in Biden’s vehicle along with drug remnants and paraphernalia. The Firearm was subsequently discarded in a trashcan outside a supermarket in Greenville, Delaware, and later recovered by law enforcement.

Id. at 10.

B. Improper influence

Documents and information obtained by congressional investigators, IRS whistleblowers, and America First Legal’s Freedom of Information Act lawsuit reveal that Mr. Biden improperly sold influence—or the perception thereof—over U.S. government agencies and policies based on his father’s official position as the Vice President of the United States. Additionally, the evidence is that Mr. Biden apparently did business as an unregistered agent of foreign principals, seemingly violating the Foreign Agents Registration Act.

i. Government access sales

Based on bank records, discussions with Mr. Biden’s former business associates, interviews with investigators from Mr. Biden’s criminal investigation, government records, and records abandoned by Mr. Biden in his laptop, congressional investigators have accumulated significant evidence that Mr. Biden has sold access to his father’s official government position, influence on United States policy, and protection from investigations or prosecution.²

During Mr. Biden’s engagements with foreign business associates that would pay him “millions of dollars for no identifiable product or service,” he placed his father on speaker phone at least 20 times, and his father sat at “dinners with oligarchs” and “met for coffee in Beijing” with his Chinese business partner.³ Mr. Biden’s associate, Devon Archer, testified that Mr. Biden leveraged his father’s “brand” for its “unique advantage” and “differentiating component ... to raise capital” “in a competitive environment.”⁴ In one case, Mr. Biden sent a WhatsApp message to a Chinese corporation official stating:

I am sitting here with my father and we would like to understand why the commitment made has not been fulfilled. Tell the director that I would like to resolve this now before it gets out of hand, and now means tonight. And, Z, if I get a call or text from anyone involved in this other than you, Zhang, or the chairman [Ye Jianming], I will make certain that between the man sitting next to me and every person he knows and

² H. COMM. ON OVERSIGHT AND ACCOUNTABILITY ET AL., 118TH CONG., IMPEACHMENT INQUIRY at 5 (Sept. 27, 2023) (available at <https://bit.ly/3PZ66Q5>).

³ *Id.* at 5.

⁴ H. COMM. ON OVERSIGHT AND ACCOUNTABILITY, 118TH CONG., INTERVIEW OF DEVON ARCHER AT 54:19–24 (July 31, 2023) (available at <https://bit.ly/3zl3hdr>).

my ability to forever hold a grudge that you will regret not following my direction.⁵

Mr. Biden even suggested setting up a “separate entity” to avoid the burden of having to “register as foreign agents” as the law requires.⁶

Mr. Biden was paid handsomely for these engagements. Congressional investigators have accounted for over \$24 million that Mr. Biden, his relatives, and his business associates have received from these foreign sources, including companies and nationals in Ukraine, Russia, Kazakhstan, Romania, and China.⁷ In particular, congressional investigators found Mr. Biden’s appointment to Burisma’s board was “problematic and did interfere in the efficient execution of [U.S.] policy with respect to Ukraine.”⁸

ii. Failure to register as a foreign agent

Records obtained by America First Legal from the National Archives and Records Administration reveal that the Obama administration and the Office of Vice President Biden received substantial press inquiries concerning Hunter Biden’s appointment at Burisma. *See* America First Legal, *Biden NARA VP Foreign Business Dealings, NARA Production 1 Hot Docs*, <https://tinyurl.com/4tsnjwjm>.

On May 13, 2014, in replying to a press inquiry forwarded from then-Vice President Biden’s press secretary (Kendra Barkoff), Hunter Biden advised the Office of Vice President about how to respond:

Interesting. Burisma is completely independent of Ukrainian government with an independent board of directors. NZ served as Minister of Ecology and resigned in 2010. *I joined the board as legal adviser and Burisma also engaged the law firm I am of counsel to Boies Schiller Flexner on matters pertaining to corporate governance, transparency and expansion. Alana Apter former head of Morgan Stanley Europe is chairman of the board.*

RHB

Id. at 4 (emphasis added).

⁵ H. COMM. ON WAYS AND MEANS, 118TH CONG., INTERVIEW OF GARY A. SHAPLEY, JR. at 158–159 (May 26, 2023) (available at <https://bit.ly/48iyvZX>).

⁶ Editorial, *Hunter Biden Aimed to Avoid Violating Foreign Corrupt Practices Act in Pursuit of Chinese Business Deal*, WASH. EXAMINER (Oct. 27, 2020), <http://tinyurl.com/msxtstjd>.

⁷ H. COMM. ON OVERSIGHT AND ACCOUNTABILITY ET AL., 118TH CONG., IMPEACHMENT INQUIRY at 1.

⁸ MAJORITY STAFF OF S. COMM. ON HOMELAND SEC. & GOV’TAL AFFS. AND S. COMM. ON FIN., REPORT ON HUNTER BIDEN, BURISMA, AND CORRUPTION at 4 (Sept. 23, 2020), <https://tinyurl.com/24ybhknc>.

In another e-mail exchange from that same day, Kendra Barkoff wrote, “[t]hanks for talking to me. let me know who I should refer folks to,” and Hunter Biden responded with the following advice about how the Office of the Vice President should respond to inquiries:

Ok-

What exactly are they asking? For the time being I’d just refer them to my office. FYI I joined the board of Burisma Holdings Ltd. (Burisma.com) an independent/ private natural gas producer in Ukraine along with the former president of Poland. I think the press release is on their website.

RHB

Id. at 13.

In the afternoon of May 13, 2014, Barkoff sent an e-mail to Hunter Biden providing to him the text of the statement the Office of the Vice President was using to respond to inquiries about Hunter Biden’s Burisma involvement:

“Hunter Biden is a private citizen and a lawyer. The Vice President does not endorse any particular company and has no involvement with this company. For any additional questions, I refer you to Hunter’s office.”

Id. at 9.

Apparently, Hunter Biden had ongoing discussions about the matter with the Office of the Vice President that continued for nearly a month and a half. On June 26, 2014, Hunter Biden wrote to Kendra Barkoff about the need to cancel a planned call:

K-

I am really sorry but I have to cancel call today.

RHB

Id.

Burisma is a “foreign principal” under FARA.⁹ Hunter Biden is Burisma’s agent and subject to FARA registration because he was an officer of Burisma and represented Burisma’s interests to the Office of the Vice President in addition to advising on a public relations matter. As an officer, Hunter Biden acted “at the order, request, or under the direction or control, of a foreign principal.”¹⁰ In advising the Office of the Vice President how to respond to press inquiries about his appointment, Hunter

⁹ 22 U.S.C. § 611(b).

¹⁰ 22 U.S.C. § 611(c)(1)(i).

Biden “represent[ed] the interests of such foreign principal before any agency or official of the Government of the United States.”¹¹ Further, Hunter Biden, while employed at Burisma, represented Burisma in a public relations matter relating to the public interests and relations of Burisma by advising the Office of the Vice President about responding to press inquiries concerning his appointment at Burisma.¹²

II. Legal Standards

District of Columbia Rule of Professional Conduct Rule 8.3, titled “Reporting Professional Misconduct” states, in relevant part,

A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

Rule 8.3(a).

District of Columbia Rule of Professional Conduct 8.4, titled “Misconduct,” states, that it is professional misconduct for a lawyer, *inter alia*, to commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects; engage in conduct involving dishonesty, fraud, deceit, or misrepresentation; or state or imply an ability to influence improperly a government agency or official.

Rule 8.4(b)–(e).

III. Mr. Biden has engaged in professional misconduct and should be investigated

The public’s faith in the integrity of our profession requires the Rules of Professional Conduct to be enforced fairly and consistently; there should be one standard, and one standard only, for Bar investigations and discipline.

The evidence is that Mr. Biden has engaged in professional misconduct, repeatedly and on a significant scale, thereby raising substantial questions as to his honesty, trustworthiness, and fitness as a lawyer. His admissions in the Delaware diversion agreement strongly suggest violations of Rules 8.4(b) and 8.4(c). Also, facts uncovered through multiple Congressional investigations and from emails from his own laptop demonstrate that Mr. Biden repeatedly stated and implied his ability to “influence improperly” U.S. government agencies and officials, strongly suggesting violations of

¹¹ 22 U.S.C. § 611(c)(1)(iv).

¹² 22 U.S.C. § 611(g).

Rule 8.4(d). Accordingly, AFL believes that the Office of Professional Responsibility should investigate Mr. Biden's alleged violations of the applicable Rules of Professional Conduct.

The public's faith in the legal system's integrity demands that the Rules of Professional Conduct be enforced fairly and consistently; there should be one standard, and one standard only, for investigations and discipline.

Thank you in advance for your cooperation. If you have any questions, please do not hesitate to contact us at info@aflegal.org.

Sincerely,

/s/ Reed D. Rubinstein
America First Legal Foundation