

OFFICE OF
GENERAL COUNSEL

William B. Canfield III
 Attorney at Law
 Suite 201
 6723 Whittier Avenue
 McLean, VA 22101

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October 29, 2019

Federal Election Commission
 Office of Complaints Examination
 and Legal Administration
 ATTN: Christal Dennis
 1050 First Street, NW
 Washington, DC 20463

Matter Under Review # 7645

Ms. Dennis:

As you know, I represent Hon. Rudolph W. Giuliani, Esq. in the above captioned Matter Under Review. This will serve as my client's formal response to the unsubstantiated assertions made by Common Cause in this matter. For the reasons set forth below, I respectfully request that the Federal Election Commission (the "Commission") dismiss this complaint as to Mr. Giuliani and take no further action against him.

Assertions in the Complaint: Common Cause "upon information and belief" alleges (1) that Mr. Giuliani, among others, "solicited or provided substantial assistance in the solicitation of, a contribution from foreign nationals, in violation of the Federal Election Campaign Act"; (2) "violated the federal ban on soliciting a contribution from a foreign national...by meeting with Ukrainian officials and urging them to pursue investigations in connection with the 2020 U.S. presidential election and for the purpose of influencing the 2020 presidential election candidacy of Joe Biden."

Facts: The assertions contained in (1) and (2) above have **NO** basis in fact and represent nothing more than uninformed speculation gleaned by Common Cause from a selective reading of media "reporting" and commentary, which was, itself, not substantiated by any documentary support.

Mr. Giuliani was, at all times, relevant to this matter, an attorney and Member of the Bar of New York. Contrary to the assertion made by Common Cause that Mr. Giuliani was acting on behalf of the 2020 Trump for President Committee, Mr. Giuliani is not now and never has been an employee of, consultant to or "operative" of the 2020 campaign or its principal campaign committee supporting the 2020 Trump for President Committee. Any assertion to the contrary made by Common Cause is unfounded, unsubstantiated, and simply false.

In April 2018, a date that long preceded, by about one year, the issuance of the final report of Special Counsel Robert Mueller, as well as preceded by one year the date of Joe Biden's announcement of his

candidacy for the Democratic Party's nomination for President, Mr. Giuliani and President Trump agreed upon Mr. Giuliani's representation of President Trump, as President Trump's personal attorney.

Having been thus engaged by the President, Mr. Giuliani commenced his legal responsibilities to his client to ascertain certain "facts" which were then being discussed in the media and on Capitol Hill and to report his finding and conclusions to his client, the President and to marshal facts for a possible defense to the Mueller report or impeachment. These "facts" and assertions were generally focused, in the media and by politicians in Washington, on alleged interference by foreign nationals into the 2016 US Presidential election. Thus, when this representation commenced in April 2018, Mr. Giuliani's brief was to investigate activities that were alleged to have occurred in 2016, and NOT a potential (as yet unannounced) campaign by Joe Biden in the 2020 Presidential election. In fact, the Biden announcement was months and months in the future and there was active speculation at that point in time, that Biden might never actually announce his candidacy.

In November 2018, Mr. Giuliani was approached by Mr. Bart Schwartz, a former Assistant United States Attorney for the Southern District of New York and currently the head of a very prominent investigative agency in New York City. Schwartz informed Mr. Giuliani that he had a source that had important background information that might prove useful to rebut any assertions about collusion by Russia in the 2016 Presidential election that could be made in the pending Mueller report, an investigation that was, at that time, still active. Mr. Giuliani realized that such rebuttal information could be extremely important to his client, the President, and that Mr. Giuliani was thus obligated by the Canon of Ethics, to ascertain whether or not the background information about actual collusion by Ukraine in 2016 was valid and would provide a defense for his client to false assertions of Russian collusion then being made in the media and on Capitol Hill.

Mr. Giuliani took the information, concerning actual collusion by Ukraine in 2016 and investigated it as fully as he could. He developed evidence of substantial collusion by Ukraine officials with members of the Obama Administration, the U.S. Embassy, the Democratic National Committee (DNC) and the Clinton campaign. He also corroborated allegations of prime facie bribery by then Vice President Biden in "strong arming" the President of the Ukraine to fire the prosecutor who was investigating Biden's son. Under both Ukrainian and American law, bribery is defined as "offering something of value in exchange for an official act. In Biden's case, he threatened to withhold a great thing of value (\$1 billion) loan guarantee in exchange for official action (firing of the Prosecutor).

In the spring 2016, Mr. Giuliani submitted this information by way of a detailed outline and some interview notes to the Department of State. He was told that the Department would conduct an internal investigation. Unfortunately, it became clear over time, to Mr. Giuliani, that the State Department had never contacted any of the individuals specifically identified in the outline he provided and did not intend to conduct the investigation. Mr. Giuliani concluded it was yet another typical DC "protect the institution" cover up.

After submitting the outline and supporting documents to the State Department, Mr. Giuliani did some additional investigation only to follow up on one or two witnesses he was unable to reach earlier. One was a Ukrainian prosecutor and the other a former official. They offered very detailed information and additional evidence about substantial collusion between Ukraine government officials and officials of the Clinton campaign and employees of the DNC. They also offered corroborating evidence of the Biden bribery and money laundering. Mr. Giuliani also cancelled a meeting with President Elect Zelensky because he was informed the people who were scheduled to be at the meeting had a history of being involved in corruption and illegal interference in the 2016 election.

On or about July 18, Mr. Giuliani was contacted by Ambassador Kurt Volker who asked if Mr. Giuliani would take a call from Andrii Yermac. He said Mr. Yermac was a close advisor and a good friend of President Zelensky. He assured Mr. Giuliani that he was a real lawyer and not like with Andriy Bohdan who was described as a “fixer” for Igor Kolomoisky. Mr. Giuliani agreed and had two useful telephone conversations with Mr. Yermac. Mr. Volker helped arrange a meeting for Mr. Yermac and Mr. Giuliani in Madrid. The purpose of the meeting was to convince Mr. Giuliani that although President Zelensky had some questionable people around him (such as Bohdan) his goal was to reform Ukraine, end corruption and remove those questionable influences. He also said that they would continue the investigations if still open or reopen the investigations if necessary. Mr. Giuliani reported this to Ambassador Volker and Gordon Sondland and answered their questions. He was told about a statement the Ukrainians were going to make and asked his opinion. Neither shared with Mr. Giuliani a copy of the letter nor did they read a draft to him. They merely asked what his opinion was in his role, namely, first and only as a private defense counsel to President Donald J. Trump. He said the statement should make clear that the President was committed to rooting out corruption including completing the investigation of the 2016 corruption. Collusion, Burisma and whatever else remained.

Throughout this timeframe, Mr. Giuliani was acting, at all times, as an Attorney engaged in exploring the development of a fact-based defense to assertions that were though likely to become part of the then pending Mueller report on Russian collusion in 2016. At no time, did Mr. Giuliani solicit, receive, or transmit any information that could possibly be defined as “opposition research” on any federal candidate or campaign committee. He did not solicit, receive or transfer any information that could be construed as political “opposition research” for the simple reason that his efforts were exclusively focused on his legal representation of a client who was then the subject of unsubstantiated allegations of misconduct. As an attorney acting on behalf of a client, the activities of Mr. Giuliani in that regard would be covered by a privilege that is recognized by the courts. Indeed, this Complaint, in itself, is a concentrated effort to hinder Mr. Giuliani in his effective defense of his client and to interfere with his client’s right to counsel. It is part of a pattern of major harassment against Mr. Giuliani in doing his duty as a lawyer for a man who is falsely accused but politically demonized.

The Law: Although Mr. Giuliani did not solicit or receive any “opposition research” information whatsoever, I will never the less address the legal “analysis” raised by the Complainant. Much speculation has occurred in the media about the definition of the term “opposition research” and whether that term meets the definition of a “contribution” as found in the Federal Election Campaign Act at 52 U.S.C. ¶30121(a)(1)(A). In fact, the theoretical basis upon which this Complaint centers on this definition.

Unfortunately for the Complainant, the Federal Election Commission has provided only limited guidance on the issue. For example, in Advisory Opinion 2007-22 the Commission discussed whether opposition research materials might meet the definition of a “contribution” and indicated that the valuation of such materials is problematic, at best, since “the value of these materials may be nominal or difficult to ascertain.” To date, a consensus does not appear to exist as to whether political opposition research (particularly the type of opposition research that is oral rather than written) is an “other thing of value” and thus a “contribution” and, if so, how such a “thing” is actually valued for purposes of the statute.

As the Federal Election Commission knows, other agencies of the US Government have recently opined on this question and their pronouncements should be carefully reviewed and taken into consideration when evaluating the assertions made by the Complainant. I cite the following to illustrate that point:

The final report of Special Counsel Robert Mueller, at page 187, provides a useful analysis...

"A campaign can be assisted not only by the provision of funds, but also by the provision of derogatory information about an opponent. Political campaigns frequently conduct and pay for opposition research. A foreign entity engaged in such research and providing resulting information to a campaign could exert a greater effect on an election, and a greater tendency to ingratiate the donor to the candidate, than a gift of money or tangible things of value. At the same time, no judicial decision has treated the voluntary provision of uncompensated opposition research or similar information as a thing of value that could amount to a contribution under campaign finance law. Such an application could have implications beyond the foreign-source ban...and raise First Amendment questions. Those questions could be especially difficult where the information consists simply of the recounting of historically accurate facts. It is uncertain how courts would resolve those issues."

The Department of Justice has also looked into this issue, in the context of President Trump's July, 2019 telephone conversation with Ukrainian President Zelensky and the assertion in a whistle blower's complaint that the content of the telephone call represented a possible campaign finance violation. In reviewing the transcript of that telephone call and the whistle blower's complaint, Department of Justice spokesperson, Kerri Kupec, informed the media that...

"Relying on established procedures set forth in the Justice Manual, the Department's Criminal Division reviewed the official record of the call and determined, based on the facts and applicable law, that there was no campaign finance violation and that no further Action was warranted."

"All relevant components of the Department agreed with this legal conclusion and the Department has concluded this matter."

These quotations can be found in the September 25, 2019 issue of the National Review as well as September 26, 2019 edition of The Hill.

Conclusion: It is clear and unarguable that Mr. Giuliani did not violate the Federal Election Campaign Act at any time during the period in which he was engaged in meetings and discussions involving actual Ukrainian collusion in the 2016 Presidential election. He did not solicit, receive or transfer any material that could be seen as political opposition research. He was not an employee, consultant or "operative" of the 2020 Trump for President Committee or any political action committee supporting the reelection of the President. He was simply an attorney reviewing information and evidence that appeared, on its face, to be substantiated and which would provide a fact-based defense for his client regarding public assertions of misconduct in 2016 by his client. For these reasons, I ask the Commission to dismiss this Complaint as to Mr. Giuliani and take no further action against him.

Sincerely,



William B. Canfield III

Counsel to Rudolph Giuliani, Esq.