

DCCA No. 24-BG-0719

**DISTRICT OF COLUMBIA
COURT OF APPEALS**

In the Matter of	:	
	:	
JEFFREY B. CLARK, ESQUIRE	:	Board Docket No. 22-BD-039
	:	
Respondent,	:	Disciplinary Docket No. 2021-D193
	:	
A Member of the Bar of the District	:	
of Columbia Court of Appeals	:	
Bar Number: 455315	:	
Date of Admission: July 7, 1997	:	

**DISCIPLINARY COUNSEL’S OPPOSITION TO RESPONDENT’S
PETITION FOR REVIEW**

Respondent Jeffrey Clark has petitioned the court for review of five orders by the Board on Professional Responsibility and Hearing Committee Number 12. Mr. Clark styles these orders as “interlocutory,” and argues that they deny his claim of immunity under *Trump v. United States*, ___ U.S. ___, 144 S. Ct. 2312 (2024). R. Pet. 1. Mr. Clark cites no case law, statute, or rule allowing for interlocutory review in disciplinary proceedings. That is because there is none. His petition is procedurally improper.

The court’s statutory authority to hear interlocutory appeals is limited to orders issued by the D.C. Superior Court. D.C. Code § 11-721; *see also* D.C. App. R. 5, 6. To the extent that Mr. Clark is attempting to seek review under D.C. App.

R. 15 (review of agency orders and decisions), neither the Board nor Hearing Committee Number 12 are agencies of the District of Columbia. *See generally* D.C. Code § 11-722. Instead, they are functionaries of this court. *See* D.C. Bar R. XI, §§ 4, 5. Rule XI, which the court promulgated to govern disciplinary matters, does not provide for interlocutory review. Rather, Board Rule 13.9 provides that the Court may review orders issued by the Board “after all the proceedings before the Board are concluded and the Board has recommended or imposed a sanction,” so long as a respondent has made a written objection to such orders. And hearing committees do not issue final decisions; they make findings of fact and recommendations that are then reviewed by the Board and, ultimately, the Court. Rule XI, §§ 5, 6; *see also* Board Rule 7.16 (hearing committee rulings on motions). Here, Hearing Committee Number 12 has only recommended that Mr. Clark’s immunity claim be denied after briefing, and the Board has not yet considered the question. Assuming *arguendo* that interlocutory review was available, neither the hearing committee nor the Board has “conclusively” determined whether Mr. Clark has immunity. *See McNair Builders, Inc. v. Taylor*, 3 A.3d 1132, 1135 (D.C. 2010) (listing “stringent” requirements to satisfy “collateral order doctrine”).

Mr. Clark’s petition is also substantively without merit. *Trump* held that a former president is absolutely immune from criminal prosecution for the exercise of core constitutional powers. 144 S. Ct. at 2329-2330. It also held that evidence of

official acts may not be admitted into evidence against a former president to prove an element of a crime arising from his unofficial acts. *Id.* at 2340-2341. *Trump* says nothing about immunity for anyone other than the president in any context other than criminal prosecutions. Mr. Clark erroneously and untenably stretches *Trump*'s narrow holdings beyond recognition to claim that he is immune from professional discipline as one of the former president's subordinates who was assisting in an official act (*i.e.* communicating with the Department of Justice). The Supreme Court said no such thing.

Based on the foregoing, the Court should deny Mr. Clark's petition for interlocutory review.

Respectfully submitted,

s/ Hamilton P. Fox, III

HAMILTON P. FOX, III

Disciplinary Counsel

THEODORE (JACK) METZLER

Senior Assistant Disciplinary Counsel

JASON R. HORRELL

Assistant Disciplinary Counsel

OFFICE OF DISCIPLINARY COUNSEL

515 5th Street, N.W.

Building A, Room 117

Washington, D.C. 20001

202-638-1501

CERTIFICATE OF SERVICE

I certify that on August 9, 2024, I caused a copy of the foregoing to be filed electronically with the Court of Appeals, and to be served on the Board on Professional Responsibility by email to CaseManager@dcbpr.org, and to Respondent's counsel via email to:

Harry W. MacDougald, Esquire, hmacdougald@CCEDlaw.com;

Charles Burnham, Esquire, charles@burnhamgorokhov.com; and

Robert A. Destro, Esquire, Robert.destro@protonmail.com.

s/ Hamilton P. Fox, III

HAMILTON P. FOX, III

Disciplinary Counsel