



**DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY
HEARING COMMITTEE NUMBER TWELVE**

In the Matter of:

Jeffrey B. Clark, Esq.
Respondent,

A Member of the Bar of the
District of Columbia Court of Appeals
(Bar No. 455315)
Board Docket No. 22-BD-039
Disciplinary Docket No. 2021-D193

**DISCIPLINARY COUNSEL’S
OPPOSITION TO MOTION TO VACATE**

Respondent Jeffrey Clark asks the Chair to vacate two orders issued following the federal district court’s decision that this disciplinary proceeding was not removable and that the district court does not have jurisdiction to consider it. Clark argues that it is instead the Hearing Committee which lacks jurisdiction to proceed. Clark cites 28 U.S.C. § 1447(c), which states that in a case “removed from a State court,” an order remanding the case “shall be mailed by the clerk [of the district court] to the clerk of the State court,” after which “[t]he State court may thereupon proceed with such case.” Clark argues that because the district court’s docket does not indicate that the clerk mailed a certified copy, the district court retains jurisdiction over the matter and the Hearing Committee may not act.

That is incorrect. The plain language of the removal statutes authorizes only the removal of a “civil action” or a “criminal prosecution” that was commenced “in a State court.” *See* 28 U.S.C. § 1441(a) (civil actions), § 1442(a) (civil actions or criminal prosecutions against federal officers). As the federal district court held, this disciplinary proceeding is neither a civil action nor a criminal prosecution within the meaning of the removal statutes. More importantly—at least for determining whether the Hearing Committee may proceed—neither the Hearing Committee nor the Board on Professional Responsibility is a “State court.” As a result, Clark’s attempted removal of the disciplinary proceeding never divested the hearing committee of jurisdiction to proceed in the first place. The district court clerk is not required to mail a certified copy of the court’s order to “the clerk of the State court” under Section 1447(c) because there is no such clerk. Indeed, the district court clerk confirmed with undersigned counsel that it would not mail a copy of the district court’s order for precisely that reason.

A. Neither the notice of removal nor 28 U.S.C. § 1447(c) prevents the Hearing Committee from proceeding.

The right to remove a case from state court to federal court is “purely statutory” and “its scope and the terms of its availability therefore are entirely dependent on acts of Congress.” 14C Wright & Miller, *Fed. Prac. & Proc. Juris.* § 3721 (Rev. 4th ed.); *see, e.g., Finn v. Am. Fire & Cas. Co.*, 207 F.2d 113, 115 (5th Cir. 1953) (removal jurisdiction is “purely statutory”). It is axiomatic that statutory

interpretation begins with the text of the statute; if the language is plain and unambiguous, then the language controls. *McPherson v. United States*, 692 A.2d 1342, 1344 (D.C. 1997) (“In interpreting a statute, we are mindful of the maxim that we must look first to its language; if the words are clear and unambiguous, we must give effect to its plain meaning.”). Here, the removal statutes plainly authorize only the removal of cases from “State court”; they do not authorize removal from non-court bodies like the Board on Professional Responsibility or this Hearing Committee. In fact, “[t]he entire series of code sections dealing with removal refer only to removal from state courts, and not to removal from administrative bodies.” *California Packing Corp. v. I.L.W.U. Local 142*, 253 F. Supp. 597, 598 (D. Haw. 1966).

The limitation to cases originating in state court appears throughout the statutes describing the procedural aspects of removal and remand. *See* 42 U.S.C. §§ 1446, 1447. Specifically, Section 1446 specifies the procedures to be followed when a defendant wishes “to remove any civil action *from a State court.*” 42 U.S.C. § 1446(a) (emphasis added). Among other requirements, the defendant must “file a copy of the notice [of removal] *with the clerk of such State court.*” *Id.* § 1446(d) (emphasis added). The clerk of the state court then “shall effect the removal,” and “*the State Court shall proceed no further unless and until the case is remanded.*” *Id.* (emphasis added). Section 1447 then specifies the procedure after removal for “any case removed *from a State court.*” 28 U.S.C. § 1447(a) (emphasis added). It provides

that an “order of remand shall be mailed by the clerk [of the district court] to the clerk of the State court,” and that “[t]he State court may thereupon proceed with such case.” *Id.* § 1447(c) (emphasis added).

By the plain language, none of those provisions applies to matters like this one, in which removal was *not* sought from an action brought in a state court. This proceeding, like all contested disciplinary matters, was initiated by Disciplinary Counsel’s filing of a petition and specification of charges with the Executive Attorney of the Board on Professional Responsibility and then assigned to this Hearing Committee. *See* D.C. Bar Rule XI, § 8(c). Neither the Board on Professional Responsibility nor the Hearing Committee is a court, nor are their members judges. *See* D.C. Bar. Rule XI, §§ 4(a) (composition of the Board), 5(a) (composition of hearing committees); *cf. In re Greenspan*, 910 A.2d 324, 338 (D.C. 2006) (finding Maryland Grievance Commission was not a “disciplining court” for reciprocal discipline under prior version of D.C. Bar R. XI, § 11). Accordingly, Clark could not comply with the requirement to file a copy of his notice of removal with the clerk of the state court because the matter was not pending in state court. There was likewise no clerk of a state court to “effect the removal,” and no state court that was required to “proceed no further unless and until the case is remanded.” *See* 28 U.S.C. § 1446(d).

Section 1447(c) does not apply for the same reason. Clark *sought to* remove this proceeding while it was pending before a Hearing Committee—not a state court;

therefore, Section 1447 does not apply because the matter is not a “case removed from a State court.” 28 U.S.C. § 1447(a). The district court’s clerk likewise cannot mail a certified copy of the district court’s order to the “clerk of the State court” because there is no court, much less a clerk of that court.¹ Indeed, on July 7, 2023, undersigned counsel spoke with the clerk for the U.S. District Court for the District of Columbia to determine whether the clerk intended to mail a certified copy of the district court’s order, and if so, to whom. The clerk advised counsel that the clerk would not mail a certified copy of the order (or place a notation of remand on the docket indicating a certified copy was sent), because there is no state court clerk in this case to receive it.

B. Clark’s authorities are not applicable.

Clark argues that the Chair should follow cases holding that “a district court loses jurisdiction over a case once it has completed the remand by sending a certified copy of the remand order to state court.” Br. 2-3 (quoting *Trans Penn Wax Corp. v. McCandless*, 50 F.3d 217, 225 (3d Cir. 1995)). But those cases involved matters that had been removed from state courts, not, as here, one in which the purported removal was not from a court at all. Unlike here, when a case is removed from state court,

¹ Clark recognizes the mismatch between the statutory language and his argument when he asserts that the clerk of the district court must send a copy of its order not to the clerk, but “to the *Hearing Committee* (presumably via the Board of Professional Responsibility or the District Court for the District of Columbia).” Br. 2.

Section 1446(d) vests jurisdiction over the case solely in the district court while it determines whether the case should be remanded, to the exclusion of the state court. Section 1447(c) then controls when jurisdiction returns to the state court following a remand. Accordingly, it is not surprising that courts in such cases have discussed when “a district court loses jurisdiction” such that it returns to state court. *See Trans Penn Wax Corp.*, 50 F.3d at 225.

Those cases are not applicable here. Instead, because the plain language of Section 1446(d) does not apply to Clark’s purported removal, the district court never had jurisdiction over the case to the exclusion of the Hearing Committee. The district court thus had no more than the jurisdiction vested in all courts to determine their own jurisdiction. *See United States v. United Mine Workers of Am.*, 330 U.S. 258, 291 (1947); *Timus v. Dist. of Columbia Dept. of Human Rights*, 633 A.2d 751, 757 (D.C. 1993). It does not matter that the Board treated this matter as if it were removed in the interim. The Board does not have the power to grant the district court jurisdiction that is not granted by the removal statutes. Moreover, in exercising its jurisdiction to decide its own jurisdiction, the district court found that this matter was not in fact removable and that the federal courts lacked jurisdiction to hear it. *See Mem. Op. Granting Motions to Remand, In re Clark*, No. 1:22-mc-96 (D. D.C. Jun. 8, 2023). Clark’s argument that the district court retains jurisdiction to the exclusion of the Hearing Committee is thus contrary not only the plain language of the removal

statutes, it is also contrary to the district court's thorough analysis and rejection of the argument that it has jurisdiction over this matter, and to the district court clerk's view that Section 1447(c) does not require it to send a certified copy of the district court's judgment to anybody.

Conclusion

The motion should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on July 11, 2023, I caused the foregoing to be filed by email to casemanager@dcbpr.org and also served it on the following:

Charles Burnham, counsel for Respondent, charles@burnhamgorokhov.com

Board on Professional Responsibility, by its Executive Attorney James T. Phalen, jtphalen@dcbpr.org.

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