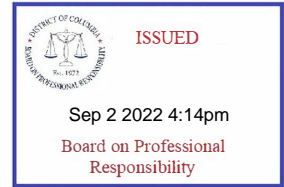


The attached document was originally filed under seal, but it is no longer sealed pursuant to a September 15, 2022 Board Order.

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY



In the Matter of: : UNDER SEAL
: :
JEFFREY B. CLARK, : :
: :
Petitioner. : Board Docket No. 22-BD-039
: Disciplinary Docket No. 2021-D193
: :
A Member of the Bar of the : :
District of Columbia Court of Appeals : :
(Bar Registration No. 455315) :

ORDER

This matter is pending before a Hearing Committee. It is before the Board on Respondent’s Response to the Board’s August 8th Sealing Order Including a Call For Affirmative Relief and Incorporated Motion to Seal, and Disciplinary Counsel’s Opposition thereto. On August 8, 2022, the Board granted the parties’ motions to file under seal the motion papers regarding Respondent’s motion for an extension of time to file his answer, and ordered the parties to publicly file copies of their motion papers with references to “Confidential Information” redacted.

The Request to Seal All Proceedings. Respondent requests that proceedings before the Board and the Hearing Committee be sealed pending a ruling from the Court of Appeals on Respondent’s request “to stay and seal all proceedings before the Board on the grounds that the Court of Appeals has exclusive jurisdiction during the pendency” of Disciplinary Counsel’s motion to compel Respondent’s compliance with Disciplinary Counsel’s investigative subpoena. Disciplinary Counsel opposes Respondent’s request to seal this entire proceeding, arguing that

Rule XI, § 17(a), provides that after a petition has been filed, “All proceedings before the Hearing Committee and the Board shall be open to the public, and the petition, together with any exhibits introduced into evidence, **any pleadings filed by the parties**, and any transcript of the proceeding, shall be available for public inspection” (emphasis added).

D.C. Bar R. XI, § 17(d) governs the issuance of protective orders, and provides that the

Board may “issue a protective order prohibiting the disclosure of confidential or privileged information or of any documents listed in the order, including subpoenas and depositions, and directing that any proceedings before the Board or a Hearing Committee be so conducted as to implement the order.” Respondent’s request to seal the entire proceeding does not identify any “confidential or privileged information” that would be disclosed absent entry of a protective order that is broader than the Board’s August 8, 2022 Order, and thus he has not established a basis for sealing all proceedings before the Board and the Hearing Committee.

Required Redactions. Respondent has submitted two different sets of proposed redactions to his motion for extension of time to respond to the Specification of Charges, and his reply in support thereof. The August 8, 2022 Order granting the parties’ motions for protective order made clear that “Confidential Information” as used in that Order “refers to the existence of and any proceedings in *In re Confidential (JBC)*, D.C. App. No. 21-BS-0059 (Disciplinary Counsel’s Motion to Enforce Subpoena Duces Tecum) filed against Respondent.” Respondent argues that “Confidential Information” to be redacted should also include “references to facts currently under seal before the Court of Appeals and to the pending federal investigation of Respondent.” Disciplinary Counsel opposes redactions beyond those required by the August 8, 2022 Board Order

D.C. Bar R. XI, § 17(a) provides that

all proceedings involving allegations of misconduct by an attorney shall be kept confidential until either a petition has been filed under section 8(c) or an informal admonition has been issued.

The subpoena enforcement *proceeding* was filed before the current Specification of Charges was filed, and thus was properly filed under seal, because it is confidential under § 17(a). It remains under seal pending the Court’s ruling on Disciplinary Counsel’s motion to unseal. However, facts

that are relevant to this public disciplinary proceeding before a Hearing Committee should not be redacted from public view because they are also relevant to the sealed subpoena enforcement proceeding pending in the Court of Appeals. Only facts that reveal the Confidential Information should be redacted. Respondent offered two sets of proposed redactions. The “narrow” redactions in Respondent’s motion and reply are largely accepted, to include a few instances where the information reasonably could reveal the nature of the Confidential Information. Similarly Disciplinary Counsel’s opposition has been redacted to remove information that reasonably could reveal the Confidential Information.

On the other hand, Respondent’s “expansive” redactions are largely rejected because they exceed the scope of the Board’s protective order and do not reveal the Confidential Information. This includes Respondent’s request to redact references to his pending federal investigation. Respondent does not discuss how those proposed redactions include “confidential or privileged information,” and thus, he has offered no basis for redacting that information from his motion papers seeking an extension of time to file his response to the Specification of Charges.

Upon consideration of the foregoing, and it is hereby

ORDERED that Respondent’s Call For Affirmative Relief and Incorporated Motion to Seal is denied; and it is further

ORDERED that, by 5 p.m. on September 6, 2022, the Office of the Executive Attorney will publicly file the attached redacted copies of: (i) this Order, (ii) Respondent’s motion for extension, (iii) Disciplinary Counsel’s opposition to Respondent’s motion, and (iv) Respondent’s reply in support of his motion; and it is further

ORDERED that a party filing any document that discloses “Confidential Information” as defined in the August 8, 2022 Order, shall file that document under seal and shall simultaneously publicly file a redacted version of that document, redacting only the “Confidential Information”;

and it is further

ORDERED that for any documents filed after the August 8, 2022 Order and prior to this Order that disclose “Confidential Information,” the filing party shall publicly file appropriately redacted copies within three days of this Order.

BOARD ON PROFESSIONAL RESPONSIBILITY

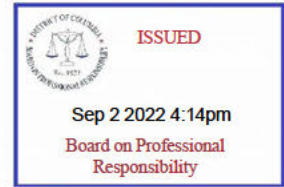
By:  _____
Lucy Pittman
Chair

cc:

Jeffrey Clark, Esquire
c/o Charles Burnham, Esquire
Robert A. Destro, Esquire
Harry W. MacDougald, Esquire
charles@burnhamgorokhov.com
robert.destro@protonmail.com
hmacdougald@ccedlaw.com

Hamilton P. Fox, III, Esquire
Jason R. Horrell, Esquire
Office of Disciplinary Counsel
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horrellj@dcodc.org

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY



In the Matter of: : **UNDER SEAL**
 :
 :
 JEFFREY B. CLARK, :
 :
 : Board Docket No. 22-BD-039
 Petitioner. : Disciplinary Docket No. 2021-D193
 :
 :
 A Member of the Bar of the :
 District of Columbia Court of Appeals :
 (Bar Registration No. 455315) :

ORDER

This matter is pending before a Hearing Committee. It is before the Board on Respondent’s Response to the Board’s August 8th Sealing Order Including a Call For Affirmative Relief and Incorporated Motion to Seal, and Disciplinary Counsel’s Opposition thereto. On August 8, 2022, the Board granted the parties’ motions to file under seal the motion papers regarding Respondent’s motion for an extension of time to file his answer, and ordered the parties to publicly file copies of their motion papers with references to “Confidential Information” redacted.

The Request to Seal All Proceedings. Respondent requests that proceedings before the Board and the Hearing Committee be sealed pending [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Disciplinary Counsel opposes Respondent’s request to seal this entire proceeding, arguing that

Rule XI, § 17(a), provides that after a petition has been filed, “All proceedings before the Hearing Committee and the Board shall be open to the public, and the petition, together with any exhibits introduced into evidence, **any pleadings filed by the parties**, and any transcript of the proceeding, shall be available for public inspection” (emphasis added).

D.C. Bar R. XI, § 17(d) governs the issuance of protective orders, and provides that the

Board may “issue a protective order prohibiting the disclosure of confidential or privileged information or of any documents listed in the order, including subpoenas and depositions, and directing that any proceedings before the Board or a Hearing Committee be so conducted as to implement the order.” Respondent’s request to seal the entire proceeding does not identify any “confidential or privileged information” that would be disclosed absent entry of a protective order that is broader than the Board’s August 8, 2022 Order, and thus he has not established a basis for sealing all proceedings before the Board and the Hearing Committee.

Required Redactions. Respondent has submitted two different sets of proposed redactions to his motion for extension of time to respond to the Specification of Charges, and his reply in support thereof. The August 8, 2022 Order granting the parties’ motions for protective order made clear that “Confidential Information” as used in that Order “refers to [REDACTED]

[REDACTED]

[REDACTED] Respondent argues that

“Confidential Information” to be redacted should also include “references to facts [REDACTED]

[REDACTED] and to the pending federal investigation of Respondent.”

Disciplinary Counsel opposes redactions beyond those required by the August 8, 2022 Board Order

D.C. Bar R. XI, § 17(a) provides that

all proceedings involving allegations of misconduct by an attorney shall be kept confidential until either a petition has been filed under section 8(c) or an informal admonition has been issued.

[REDACTED]

[REDACTED]

[REDACTED] However, facts

that are relevant to this public disciplinary proceeding before a Hearing Committee should not be redacted from public view [REDACTED]

[REDACTED] Only facts that reveal the Confidential Information should be redacted. Respondent offered two sets of proposed redactions. The “narrow” redactions in Respondent’s motion and reply are largely accepted, to include a few instances where the information reasonably could reveal the nature of the Confidential Information. Similarly Disciplinary Counsel’s opposition has been redacted to remove information that reasonably could reveal the Confidential Information.

On the other hand, Respondent’s “expansive” redactions are largely rejected because they exceed the scope of the Board’s protective order and do not reveal the Confidential Information. This includes Respondent’s request to redact references to his pending federal investigation. Respondent does not discuss how those proposed redactions include “confidential or privileged information,” and thus, he has offered no basis for redacting that information from his motion papers seeking an extension of time to file his response to the Specification of Charges.

Upon consideration of the foregoing, and it is hereby

ORDERED that Respondent’s Call For Affirmative Relief and Incorporated Motion to Seal is denied; and it is further


ORDERED that, by 5 p.m. on September 6, 2022, the Office of the Executive Attorney will publicly file the attached redacted copies of: (i) this Order, (ii) Respondent’s motion for extension, (iii) Disciplinary Counsel’s opposition to Respondent’s motion, and (iv) Respondent’s reply in support of his motion; and it is further

ORDERED that a party filing any document that discloses “Confidential Information” as defined in the August 8, 2022 Order, shall file that document under seal and shall simultaneously publicly file a redacted version of that document, redacting only the “Confidential Information”;

and it is further

ORDERED that for any documents filed after the August 8, 2022 Order and prior to this Order that disclose “Confidential Information,” the filing party shall publicly file appropriately redacted copies within three days of this Order.

BOARD ON PROFESSIONAL RESPONSIBILITY

By: 

Lucy Pittman
Chair

cc:

Jeffrey Clark, Esquire
c/o Charles Burnham, Esquire
Robert A. Destro, Esquire
Harry W. MacDougald, Esquire
charles@burnhamgorokhov.com
robert.destro@protonmail.com
hmacdougald@ccdlaw.com

Hamilton P. Fox, III, Esquire
Jason R. Horrell, Esquire
Office of Disciplinary Counsel
foxp@dcodc.org
horrellj@dcodc.org

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of

JEFFREY B. CLARK

**A Member of the Bar of the District
of Columbia Court of Appeals**

Bar No. 455315

Date of Admission: July 7, 1997

Disciplinary Docket No.

2021-D193

MOTION FOR EXTENSION OF TIME

Comes now Jeffrey B. Clark, Respondent in the above-entitled matter, and hereby moves for a 21-day extension of time within which to file his answer or responsive pleadings to the Specification of Charges filed against him by the Office of Disciplinary Counsel. Disciplinary Counsel opposes this request.

The answer or responsive pleadings are currently due on August 11, 2022, as the Charges were served on July 22, 2022. And Disciplinary Counsel had previously agreed with our computation that the current deadline is August 11. This Motion is thus timely filed under Rule 13.11 of the Rules of the Board of Professional Responsibility.

Respondent seeks a 21-day extension due to the need to coordinate the preparation of the answer or responsive pleadings and the overall response to the Charges among his counsel and in coordination with his employment obligations.

In particular, Charles Burnham has multiple briefing deadlines and several substantive hearings in the months of August and September; Robert Destro has multiple professional obligations prior to Labor Day, including a previously-scheduled speaking appearance in Pennsylvania from August 30-September 1, 2022. And Mr. Destro will need a block of prior time to prepare for that highly technical appearance.

Finally, Mr. Clark is still in the early days of new employment. He has several legal projects he is working on that were already interrupted by loss to access to computer devices this June when the Department of Justice Inspector General executed a search warrant and seized his electronic devices. DOJ has not responded to multiple requests to return the devices. As a result, Mr. Clark is without access to about one month's worth of work in progress on his existing projects for his new employer. Without the computers on which this work in progress resided, he has had to begin such work from scratch causing other internal deadlines to pile up. Additionally, Mr. Clark's main desktop computer housed all of his files (including pleadings, research, correspondence, etc.) on this case at the investigative stage. [REDACTED]

[REDACTED]

[REDACTED] Mr. Burnham has

also repeatedly endeavored to see DOJ return the computer in question to Mr. Clark.

This is far from a simple matter due in part to the novel issues presented and the parallel Congressional and federal criminal investigations into the matters referred to in the Charges [REDACTED]

[REDACTED]

The requested extension will not cause any undue delay in the progress of this case.

Disciplinary Counsel declined to agree to a 28-day extension. As a result, Respondent and his counsel worked together to reduce the requested extension to 21 days so as to compromise as best as possible with Disciplinary Counsel.

Wherefore, Respondent respectfully requests that he be granted a 21-day extension within which to file his answer or other responsive pleadings in this case. This would make the new deadline **September 1, 2022**.

Respectfully submitted this 3 day of August, 2022.

[Signatures on next page]

/s/ Charles Burnham

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Robert A. Destro*
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**Motion for pro hac vice admission
before DCCA in progress*

Harry W. MacDougald*
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hmacdougald@ccedlaw.com
** Motion for pro hac vice admission before
DCCA in progress*

CERTIFICATE OF SERVICE

I hereby certify that I have on August 3, 2022 served counsel for the opposing party and the executive attorney by email addressed to:

Hamilton P. Fox
Jason R. Horrell
D.C. Bar
Building A, Room 117
515 5th Street NW
Washington DC 20001
foxp@dcodc.org

James T. Phalen
Executive Attorney
Office of the Executive Attorney
430 E. Street, NW Suite 138
Washington, DC 20001
casemanagers@dcpbr.org

/s/ Charles Burnham _____
Charles Burnham
DC Bar No. 1003464
1424 K Street, NW
Suite 500
Washington DC 20005
(202) 386-6920
charles@burnhamgorokhov.com

**DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY**

Under Seal

In the Matter of

JEFFREY B. CLARK

**A Member of the Bar of the District
of Columbia Court of Appeals**

Bar No. 455315

Date of Admission: July 7, 1997

Disciplinary Docket No.

2021-D193

**REPLY IN SUPPORT OF MOTION FOR
EXTENSION OF TIME**

Comes now Jeffrey B. Clark, Respondent in the above-entitled matter, and submits this Reply in support of his motion for an extension of time to respond to the Specification of Charges filed against him.

Disciplinary Counsel attempts to justify his opposition to the motion for an extension of time with a diatribe against what he has chosen to portray as Mr. Clark's "dilatatory tactics." In fact, any delay going back to service of the original letter of inquiry and subpoena for the production of documents stems directly from ODC's failure to respect the applicable procedural requirements. The attempt to blame Respondent mischaracterizes the facts. In seeking an extension Respondent did not address those topics or invite argument about them, but he is now obliged to respond.

This history will only be briefly reviewed here for it is recounted in detail with supporting affidavits in [REDACTED]

[REDACTED]

[REDACTED]

I. PROCEDURAL BACKGROUND

1. THE FIRST SUBPOENA FOR DOCUMENTS AT THE INVESTIGATIVE STAGE

Disciplinary Counsel attempted to serve a subpoena for documents on the Respondent (the “First Subpoena”). Service of the First Subpoena was defective — and not because of any action by Respondent. It was (i) not personally served at all, (ii) was not accompanied by the required fee to pay for contingent attendance at ODC’s offices if documents were not to be produced on grounds of privilege, (iii) the affidavit of service was not certified and signed by the serving adult, and (iv) personal service was never waived by counsel or Respondent. Additionally, Respondent did not receive a full copy of the First Subpoena and its attachments, albeit lacking proper service, until January 6, 2022, at which time Respondent, who was at the tail end of recovering from COVID-19, immediately set to work discussing the retention of counsel with his professional responsibility insurance carrier. [REDACTED] Ethics counsel,

[REDACTED]

once retained and with approval of Respondent's insurer, also began to work on the myriad of legal defenses and issues involved in this case. On the return date of the First Subpoena, counsel for Respondent served ODC with extensive letters objecting to the subpoena. Disciplinary Counsel implies there was something untoward about objecting to the First Subpoena right on the return date, but such a complaint about a timely objection has no legal merit whatsoever. The whole point of the negotiated deadline of January 31, 2022 was that this was the date by which Mr. Clark, through his lawyers, would respond to ODC's subpoena. We do not understand how any obligation to respond sooner could be implied.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2. THE SECOND SUBPOENA FOR DOCUMENTS AT THE INVESTIGATIVE STAGE

Seeking to correct defective service of the First Subpoena, Disciplinary Counsel undertook to serve a Second Subpoena. Through counsel, Respondent agreed to accept service at home on February 28, 2021. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Apart from the defective service of the First Subpoena, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Obviously, responsibility for defective service of the subpoenas lies with Disciplinary Counsel, not Respondent.⁴

[REDACTED]

Disciplinary Counsel next accuses Respondent of “evading service” of the Specification of Charges. No evidence is offered to support this attempt to besmirch Respondent, and indeed it is false. Disciplinary Counsel made the same false

⁴ [REDACTED]

accusation in an email to one of Respondent's attorneys on July 21, 2022 as follows:

"I sent a process server to serve Clark yesterday. He refused to open the door and said he had to check with his lawyer. Are we really going to play this game? I can always apply to the Court for permission to serve him by alternative means." In response, Respondent's counsel informed Disciplinary Counsel that his story was not correct:

2. The only communication between Mr. Clark and the process server yesterday was by phone. When the process server declined to identify the papers that he was wanting to serve, Mr. Clark asked to speak with his counsel. There was no refusal to open a door and no communication through a closed door. The last time you wanted to serve something through a process server you coordinated it through me without any problem, so I don't know why you didn't go that route this time.

See Exh. A attached hereto, email chain between Mr. Fox and Mr. MacDougald, attached hereto; Exh. B attached hereto (Declaration of Jeffrey B. Clark). In fact, Mr. Clark was accompanied by two witnesses (whom we can produce to the Board if necessary) when he voluntarily accepted service by agreement on the morning of July 22, 2022 near his workplace on Capitol Hill in the District. Within an hour, Mr. Fox's office blasted a copy of the complaint to six national reporters. *See* Exh. C attached hereto, an email from a Reuters reporter forwarding an email from Lawrence Bloom of the Office of Disciplinary Counsel transmitting a copy of the Charges to six reporters, one at Bloomberg, two at CNN, two at Reuters, and one at

American Lawyer Media.⁵

After finishing his mistaken recounting of the facts, Disciplinary Counsel finally turns to taking up the grounds for the Motion for an Extension of Time. He belittles the complexity of the undertaking before Respondent and his counsel and belittles the obstacles imposed by the Department of Justice’s seizure of Respondent’s computer containing all of his work on this matter and all of his work for his new employer. Disciplinary Counsel cannot fairly trivialize the genuine problem these circumstances create for Respondent, nor should he attempt to exploit the situation. That is no way to responsibly conduct these proceedings.

[REDACTED]

[REDACTED] Given that the Department of Justice chose to execute an early morning search warrant with a dozen armed officers in tactical gear and proceeded to take all of Respondent’s electronic devices, [REDACTED]

[REDACTED]

[REDACTED]

⁵ The attempt to serve Mr. Clark on July 20, 2022 – without any prior notice to counsel for Mr. Clark nor any attempt arrange for acceptance of service – came quite coincidentally the day before the highly publicized July 21, 2022 hearing of the January 6 Committee. The filing of the charges was reported in the national news on the day service was made. *See, e.g.* Google search results for “Jeffrey Clark Bar charges”: <https://tinyurl.com/2p85nzzn> (Approx. 6.5 million results on August 4, 2022)..

[REDACTED]

[REDACTED]

[REDACTED]

Disciplinary Counsel has rushed to file the Charges, rushed to serve Mr. Clark the day before a prime time hearing of the January 6 Committee, and lastly rushed to blitz the Charges out to reporters. Indeed, without explaining the timing for why he was asking, Reuters reporter David Thomas reached out to undersigned counsel, Mr. MacDougald (email reprinted in the footnote below), at 9:26 *am* EDT the morning of July 20, 2022. This suggests that someone in ODC may have leaked to Mr. Thomas that service of public charges against Mr. Clark would be attempted later that same day.⁶

Disciplinary Counsel has now refused a routine courtesy in an effort to exploit Respondent's predicament and purported to justify it by groundlessly blaming Respondent for Disciplinary Counsel's own mistakes and [REDACTED] choices. ODC's relations with the press are further cause for concern. This goes beyond the denial of a "courtesy" to opposing counsel—it is downright unfair. Disciplinary counsel would force Respondent to respond to the Charges and to make the choice

⁶ "To Harry MacDougald, My name is David Thomas and I am a reporter with Reuters. I understand you are representing Jeffrey Clark during his investigation by the D.C. Office of Disciplinary Counsel. I believe my colleagues reached out to you in March about how former colleagues of Clark's are cooperating with the disciplinary counsel's investigation: <https://www.reuters.com/world/us/exclusive-two-former-us-officials-help-ethics-probe-trump-ally-clark-source-says-2022-03-29/> I was wondering if you had any comment now regarding that investigation. If you could get back to me at your soonest convenience, I would greatly appreciate it." See Exh. D, attached hereto.

precipitously of asserting or waiving his Fifth Amendment rights in this proceeding while there is a federal criminal investigation underway, in a controversy that is politically supercharged, in a jurisdiction that is extremely politically biased against Respondent. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. The legal and strategic issues in this case are complex and momentous for the Respondent and precedential for the D.C. Bar as a whole, notwithstanding Disciplinary Counsel's attempt here to paint a simple extension request as if it were unethical conduct or sharp practice.

CONCLUSION

The record shows that the delay about which Disciplinary Counsel complains was actually caused by clerical and procedural faults and strategic decisions that he made, not Respondent. It further shows that Disciplinary Counsel's smear of Respondent as trying to evade service of the Charges in this case is reckless and false, and furthermore was made after he was told by undersigned counsel that it was not true. Disciplinary Counsel has taken to blaming others for his own mistakes or tactical regrets. Mr. Clark (and we as his lawyers) are entitled to insist on full observance of both his procedural and substantive rights.

Respondent respectfully requests that under these circumstances he be granted an additional 21 days in which to respond to the Charges.

Respectfully submitted this 5th day of August, 2022.

/s/ Charles Burnham

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**Motion for pro hac vice admission
before DCCA in progress*

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Atlanta, Georgia 30346
(404) 843-1956
hmacdougald@ccedlaw.com

** Motion for pro hac vice admission before
DCCA in progress*

CERTIFICATE OF SERVICE

I hereby certify that I have on this day served counsel for the opposing party with a copy of this *Reply in Support of Motion for Extension of Time* by email addressed to:

Hamilton P. Fox
Jason R. Horrell
D.C. Bar
Building A, Room 117
515 5th Street NW
Washington DC 20001
foxp@dcodc.org

This this 5 day of August, 2022.

/s/ Charles Burnham _____

Charles Burnham
DC Bar No. 1003464
1424 K Street, NW
Suite 500
Washington DC 20005
(202)3866920

charles@burnhamgorokhov.com

Subject: RE: [EXT]Re: Clark

From: hmacdougald@ccedlaw.com - To: Phil Fox - Cc: Angela Thornton, Azadeh Matinpour, Jason Horrell - Date: July 21, 2022 at 12:34 PM

He'll be there, and we'll agree to disagree on [REDACTED].

Regards,

Harry W. MacDougald
Caldwell, Carlson, Elliott & DeLoach, LLP
Two Ravinia Drive
Suite 1600
Atlanta, Georgia 30346
[404-843-1956](tel:404-843-1956)
Direct: 404-843-4109

From: Phil Fox <foxp@dcodc.org>
Date: July 21, 2022 at 12:22:00 PM
To: Harry MacDougald <hmacdougald@ccedlaw.com>
Cc: Angela Thornton <thorntona@dcodc.org>, Azadeh Matinpour <matinpoura@dcodc.org>, Jason Horrell <horrellj@dcodc.org>
Subject: RE: [EXT]Re: Clark

I will agree to your terms, but [REDACTED] makes no sense. [REDACTED]

[REDACTED]

From: Harry MacDougald <hmacdougald@ccedlaw.com>
Sent: Thursday, July 21, 2022 12:17 PM
To: Phil Fox <FoxP@dcodc.org>
Cc: Angela Thornton <thorntona@dcodc.org>; Azadeh Matinpour <matinpoura@dcodc.org>; Jason Horrell <horrellj@dcodc.org>
Subject: [EXT]Re: Clark

Exhibit A

Phil:

1. If you will agree that accepting service will be without prejudice to our ability to argue that

[REDACTED] Mr. Clark will accept service of your papers tomorrow morning at 9:15 AM in front of the Hunan Dynasty Restaurant at 215 Pennsylvania Ave., SW, Washington, DC 20003. We also require your assurance that press will not be there. Please let me know if these points are agreeable.

2. The only communication between Mr. Clark and the process server yesterday was by phone. When the process server declined to identify the papers that he was wanting to serve, Mr. Clark asked to speak with his counsel. There was no refusal to open a door and no communication

through a closed door. The last time you wanted to serve something through a process server you coordinated it through me without any problem, so I don't know why you didn't go that route this time.

Harry W. MacDougald
Caldwell, Carlson, Elliott & DeLoach, LLP
Two Ravinia Drive
Suite 1600
Atlanta, Georgia 30346
[404-843-1956](tel:404-843-1956)

Direct: 404-843-4109

From: Phil Fox <foxp@dcodc.org>
Date: July 21, 2022 at 11:04:24 AM
To: Harry MacDougald <hmacdougald@ccedlaw.com>
Cc: Angela Thornton <thorntona@dcodc.org>, Jason Horrell <horrellj@dcodc.org>, Azadeh Matinpour <matinpoura@dcodc.org>
Subject: Clark

I sent a process server to serve Clark yesterday. He refused to open the door and said he had to check with his lawyer. Are we really going to play this game? I can always apply to the Court for permission to serve him by alternative means.

**DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY**

Under Seal

In the Matter of

JEFFREY B. CLARK

**A Member of the Bar of the District
of Columbia Court of Appeals**

Bar No. 455315

Date of Admission: July 7, 1997

Disciplinary Docket No.

2021-D193

**DECLARATION OF
JEFFREY B. CLARK**

Personally appeared before the undersigned officer, duly authorized to administer oaths, Jeffrey B. Clark, who, after being duly sworn, testified and stated as follows:

1.

My name is Jeffrey B. Clark. I am over the age of 18, suffer no mental imparities, and have personal knowledge of the following:

2.

I am an attorney licensed to practice law in the District of Columbia since 1997. I am admitted to the bars of the U.S. Supreme Court, the U.S. Courts of Appeal for all Circuits, the U.S. District Court for the District of Columbia, as well as several

other Districts, and the Court of Federal Claims. I am the Respondent in the above-referenced matter.

3.

On the evening of July 20, 2022, I received a phone call from a man who stated he was trying to serve me with papers. I asked him who he was serving the papers for, and he identified the D.C. Bar. I asked him what the papers were exactly. He managed to note it was something from the Office of Disciplinary Counsel but it was clear that fully understanding the nature of the papers was something he could not do accurately. I then told him that I would like to speak to at least one of my lawyers before agreeing to accept service. I was still physically at work at my new job in the District of Columbia, which is in the Capitol Hill area, when this conversation took place — not at my home in Lorton, Virginia. I told him I would call him back depending on the advice I received from my lawyers.

4.

I have seen the filing by Disciplinary Counsel for the D.C. Bar in response to my Motion for an Extension of Time which states, in reference to service of the Specification of Charges, that “When a process server went to Mr. Clark’s home to serve him with the petition and specification of charges, Mr. Clark refused to admit him.” *See* Response, p. 3. This is not true. I had no communication with the first process server who called me on July 20 other than over the phone, as described

above. I never knew that day — nor do I know now — whether the process server actually went to my home. I was not at home when he called, so I would not have heard anyone ring the doorbell or knock on the door if he did do that before dialing me. Nor do I know what time the process server might have relayed to Mr. Fox that he went to my home, so I do not know if he had gone to my home before I left for work that morning or never went to my home at all. There was no note or card left at my door when I left for work on July 20 or when I got home that evening. When I saw certain email traffic between Mr. Fox and one of my lawyers wrongly asserting I had refused to answer the door to a process server, I asked my other family members if a man (or anyone) had knocked at the door that afternoon or evening and they had turned such a person away. My family members all told me “no.” Nor did the first process server I spoke to by phone even tell me he had gone to my home or ask me to step outside my home in Virginia (I would have told him I was not there) or ask me to open the door to my home. I got the distinct impression from the first process server I spoke to that he first wanted me to agree to accept service that night and tell him where to drive to for service purposes, but as noted, I insisted I wanted to speak to counsel first, so I did not give him a location. In sum, even if the first process server did come to my house unbeknownst to me and my family at home without me at the time, I certainly did not refuse to admit the first process server to

my house. I never communicated with him at all except over the phone as described above.

5.

After consulting with my counsel starting the evening of July 20 and running into about midday on July 21, my lawyer, Mr. MacDougald, made arrangements with Mr. Fox for personal service on me, and I agreed to accept service on July 22, 2022. As a result, I met the second process server (who, based on his voice and manner of speech, seemed to be a different person than the first process server) at the agreed time and place, which was the morning of July 22 at a location on Capitol Hill. I was then voluntarily served on July 22, consistent with the prior arrangements that were made on July 21. I had two interns from my place of employment with me at the time who are witnesses to this event.

6.

Had Disciplinary Counsel approached my counsel to arrange for service in the first instance, his baseless smear that I had attempted to evade service of the Charges could have and should have been avoided. At all prior times since I retained counsel for this matter, Mr. Fox or one of his subordinates have called or emailed counsel first before trying to contact me. I do not know why Mr. Fox followed a different procedure as to a represented party in this instance.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 4, 2022.

 /s/ Jeffrey B. Clark
Jeffrey B. Clark

Subject: FW: Public Specification of Charges (Clark)

From: Lynch, Sarah N. (Reuters) - To: JEFFREY.B.CLARK@GMAIL.COM, hmacdougald@ccedlaw.com - Cc: - Date: July 22, 2022
at 10:08 AM, Attachments: Spec. Jeffrey B. Clark.pdf

Jeff & Harry,

Do you have any response to these charges?

Please email if possible.

I am in court, covering the Bannon trial, so unable to take calls at this time.

Best,
Sarah

202 579 0289

From: Lawrence Bloom <blooml@dcodc.org>

Sent: Friday, July 22, 2022 10:01 AM

To: David McAfee <dMcAfee@bloombergindustry.com>; Katelyn Polantz <katelyn.polantz@warnermedia.com>; Scarcella, Mike (Reuters) <Mike.Scarcella@thomsonreuters.com>; Lynch, Sarah N. (Reuters) <Sarah.N.Lynch@thomsonreuters.com>; Tierney Sneed <tierney.sneed@warnermedia.com>; Vanessa Blum <vblum@alm.com>

Cc: Phil Fox <FoxP@dcodc.org>; Angela Thornton <thorntona@dcodc.org>

Subject: [EXT] Public Specification of Charges (Clark)

External Email: Use caution with links and attachments.

Lawrence K. Bloom
Senior Staff Attorney
Office of Disciplinary Counsel
515 Fifth Street, NW
Building A, Room 117
Washington, DC 20001
(202) 638-1501 ext. 1744

Exhibit C

Subject: Reuters reporter question

From: Thomas, David (Reuters) - To: hmacdougald@ccedlaw.com - Cc: - Date: July 20, 2022 at 9:27 AM

To Harry MacDougald,

My name is David Thomas and I am a reporter with Reuters. I understand you are representing Jeffrey Clark during his investigation by the D.C. Office of Disciplinary Counsel. I believe my colleagues reached out to you in March about how former colleagues of Clark's are cooperating with the disciplinary counsel's investigation: <https://www.reuters.com/world/us/exclusive-two-former-us-officials-help-ethics-probe-trump-ally-clark-source-says-2022-03-29/>

I was wondering if you had any comment now regarding that investigation. If you could get back to me at your soonest convenience, I would greatly appreciate it.

Thank you.

David Thomas (he/him)
Legal News Reporter
Thomson Reuters
+1 646 823 0937
d.thomas@thomsonreuters.com
Twitter: @DaveThomas5150

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UNDER SEAL

**DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY**


In the Matter of	:	
	:	
CONFIDENTIAL (J.B.C.), ESQ.	:	Disciplinary Docket No. 2021-D193
	:	
Respondent,	:	DCCA No. 21-BS-0059
	:	
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 MOTION FOR EXTENSION OF
TIME TO FILE RESPONSE TO SPECIFICATION OF CHARGES**

Respondent Jeffrey B. Clark has moved for a 21-day extension of time to file his “answer or responsive pleadings” to the Specification of Charges. Board Rule 7.5 requires the filing of an answer within 20 days of service of the petition (in cases where the time is not extended.) It says nothing about other “responsive pleadings.” Based on previous communications with Mr. Clark’s counsel, it appears that he intends to file some sort of motion to defer either based on Board Rule 4.2 (he has previously requested Disciplinary Counsel to defer pursuant to Board Rule 4.1, which Disciplinary Counsel declined to do) or [REDACTED]

[REDACTED]

[REDACTED]

 This is consistent with Mr. Clark's previous efforts to delay this matter, and the motion should be denied. Mr. Clark should be required to answer the charges by August 11, 2022. He can file whatever motions he is contemplating later, pursuant to Board Rule 7.13 & 7.14(a).

From the outset of this investigation, Mr. Clark has sought to stall this proceeding. Disciplinary Counsel sent Mr. Clark's lawyer a letter on October 18, 2021, enclosing the Senate Judiciary Committee's Majority Staff Report accusing him of misconduct and asked for his response by November 8, 2021. Mr. Clark offered one excuse after another in an effort to avoid responding. First, his lawyer (not current counsel) did not receive the electronic communication. His lawyer then withdrew, and Disciplinary Counsel re-sent the letter directly to Mr. Clark on November 22, 2021 and asked for a response by December 13, 2021. Mr. Clark claimed to have difficulty receiving the electronic communication as well. He wanted additional time to retain new counsel. He was sick. Finally on January 10, 2022, Disciplinary Counsel sent Mr. Clark a demand that he respond to the inquiry no later than January 31, 2022. Mr. Clark waited until the very last day, and then on January 31 his current counsel responded with a 69-page letter, with attachments setting forth arguments why Mr. Clark should not be investigated, asking

Disciplinary Counsel to defer the investigation, but not responding specifically to the factual allegations.

Disciplinary Counsel also sought to subpoena documents from Mr. Clark. Mr. Clark received the subpoena electronically at least by the November 22, 2021 communication. He made no objection to this form of service, which was common practice during the pandemic. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Disciplinary Counsel submitted a specification of charges against Mr. Clark in July 2022, which a contact member approved. When a process server went to Mr. Clark's home to serve him with the petition and specification of charges, Mr. Clark refused to admit him. Mr. Clark then agreed to accept service on July 22, 2022, and service was accomplished. The specification of charges is less than nine pages long, consisting of 31 paragraphs and two charged Rule violations. Mr. Clark is represented by three law firms, and there is not plausible reason why his lawyers cannot file a simple Answer in 20 days. Mr. Clark's alleged need for access to his computer devices might be relevant were a hearing in the immediate offing but admitting or denying the allegations does not require that access. This is particularly³

so since there have been two Congressional hearings—one by the Senate Judiciary Committee and one by the House January 6 Committee—in which Mr. Clark participated, and which have developed the facts.

Disciplinary Counsel is generally willing to accommodate requests for reasonable extensions, but not in the face of an on-going history of delay and avoidance. It is impossible to accept that three different law firms cannot respond to a short specification of charges on time. Given the tactics that he has previously employed, the hearing committee can have no assurance that Mr. Clark will not persist in his efforts to delay the resolution of the charges against him. Indeed, his motion for delay in order to file “responsive pleadings,” tips his hand that this is what he intends to continue to do. Delay is endemic to the disciplinary system. The hearing committee should not exasperate the problem—particularly in a case of this importance—by honoring such flimsy excuses.

The motion for extension should be denied.

Respectfully submitted,

Hamilton P. Fox, III

Hamilton P. Fox, III
Disciplinary Counsel
Bar Registration No. 113050

/s/ Jason R. Horrell

Jason R. Horrell
Assistant Disciplinary Counsel
Bar Registration No. 1033885

OFFICE OF DISCIPLINARY COUNSEL
515 Fifth Street, N.W.
Building A, Room 117
Washington, D.C. 20001
(202) 638-1501

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of August 2022, I caused a copy of the foregoing *Disciplinary Counsel's Opposition to Respondent's Motion for Extension of Time to File Response to Specification of Charges* to be served on the Board of Professional Responsibility c/o Case Managers to casemanagers@dcbpr.org and to Respondent's counsels via email to Harry W. MacDougald, Esquire, to hmacdougald@CCEDlaw.com, to Charles Burnham, Esquire, to charles@burnhamgorokhov.com, and Robert A. Destro, Esquire, to Robert.destro@protonmail.com.

Hamilton P. Fox, III

Hamilton P. Fox, III