

Not for Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

IN RE:) S. Ct. Civ. No. 2022-0006
)
WARREN T. BURNS,)
Petitioner.)

On Petition for Writ of Mandamus

Considered and Filed: March 16, 2022

Cite as: 2022 VI 2U

BEFORE: RHYS S. HODGE, Chief Justice; MARIA M. CABRET, Associate Justice; and
IVE ARLINGTON SWAN, Associate Justice.

APPEARANCES:

Andrew L. Capdeville, Esq.
Law Offices of Andrew L. Capdeville, P.C.
St. Thomas, U.S.V.I.
Attorney for Petitioner.

Tanisha Bailey-Roka, Esq.
Chief Disciplinary Counsel
St. Croix, U.S.V.I.
Attorney for Respondent.

OPINION OF THE COURT

PER CURIAM.

¶ 1 This matter is before the Court on a petition for writ of mandamus filed by Petitioner Warren T. Burns, Esq. “To obtain a writ of mandamus, [the petitioner] must establish that his right to the writ is clear and indisputable and that he has no other adequate means to attain the desired relief.” *In re Fleming*, 56 V.I. 460, 464 (V.I. 2012). But “even if the first two prerequisites have been met, the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances.” *Moorhead v. Mapp*, 62 V.I. 595, 600 (V.I. 2015) (quoting

Cheney v. U.S. Dist. Court, 542 U.S. 367, 380-81 (2004)).

¶ 2 In his petition, Burns requests that this Court issue a writ mandating the Office of Disciplinary Counsel (“ODC”) to dismiss a grievance filed against him or, in the alternative, for the ODC to issue a scheduling order. Burns discloses in his petition, however, that the ODC had referred the grievance to the Preliminary Review Committee (“PRC”) of the Board on Professional Responsibility. Supreme Court Rule 207 grants the ODC the discretion to dismiss a grievance prior to its referral to the PRC. *See* V.I.S.Ct.R. 207.9(a)-(b). However, the ODC lacks the discretion to unilaterally dismiss a grievance that it has elected to refer to the PRC—once such a referral occurs, the decision on how to proceed with the grievance belongs to the PRC, which is empowered to act on the grievance after reviewing the recommendation of the ODC and any written information submitted by the respondent. Such action may include dismissal, private probation or private admonition, offers of conditional diversion, a stay, or the filing of a petition for discipline with the Board, which would then result in a formal disciplinary proceeding. *See* V.I.S.Ct.R. 207.9(b)(3). Importantly, the respondent is not entitled to appear at a meeting of the PRC, *see* V.I.S.Ct.R. 207.9(b)(1), and, because the PRC serves a similar function to a grand jury, it is not in any way bound by whatever recommendation the ODC may have made to it, *see* V.I.S.Ct.R. 207.9(b)(3). Moreover, the PRC, as an entity independent of the ODC, possesses the authority to control its own proceedings, and thus the ODC lacks the authority to issue a scheduling order for the PRC or to otherwise dictate the course of the proceedings before the PRC.

¶ 3 Because the ODC is the only respondent Burns has identified in his petition, and the ODC lacks the authority to take any of the actions he requests that we order through a writ of mandamus, this Court concludes that Burns has failed to meet his burden of proving that his right to such relief from the ODC is clear and indisputable. Moreover, Burns possesses an obvious alternate avenue

to obtaining the relief he seeks which, based on his petition, appears untried: requesting that relief from the PRC. Consequently, Burns has failed to establish his entitlement to a writ of mandamus.¹

Dated this 16th day of March 2022.

ATTEST:

VERONIA J. HANDY, ESQ.
Clerk of the Court

By: /s/ Natasha Illis
Deputy Clerk II

Dated: March 16, 2022

¹ Because we hold that the ODC lacks the authority to provide Burns with the relief he seeks and that other alternative avenues exist to obtain such relief, we express no opinion as to the merits of his claims, including his claim that he is entitled to dismissal of the grievance due to a lack of evidence.