

**For Publication**

**IN THE SUPREME COURT OF THE VIRGIN ISLANDS**

**IN RE: WARREN T. BURNS,** ) **S. Ct. Civ. No. 2023-0025**  
Petitioner. )  
\_\_\_\_\_ )

On Petition for Writ of Mandamus

Considered and Filed: June 7, 2023

Cite as: 2023 VI 7

**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.*

**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[se] 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 compelling the Office of Disciplinary Counsel (“ODC”) and/or the Board on Professional Responsibility (“BPR”) to

dismiss a grievance filed against him or, in the alternative, to order them to take action to move the underlying proceeding forward to a timely resolution, including constituting a proper panel, resolving disputed discovery issues, and establishing deadlines for the disposition of the matter.

¶ 3 We conclude that Burns has failed to establish an entitlement to mandamus relief on any of these grounds. As we held in an opinion denying a prior mandamus petition filed by Burns in connection with the same grievance, “the ODC lacks the discretion to unilaterally dismiss a grievance that it has elected to refer” to the BPR, and that likewise “the ODC lacks the authority to issue a scheduling order for the [BPR] or to otherwise dictate the course of the proceedings” after it has made its referral. *In re Burns*, 2022 VI 2U ¶ 2. Consequently, all of Burns’ claims against the ODC must fail because the ODC cannot provide him with any of the relief he seeks, since the ODC lacks the authority to unilaterally dismiss the grievance or to impose case-processing deadlines for the BPR.

¶ 4 Although the BPR could provide Burns with such relief, we likewise conclude that Burns has failed to establish an entitlement to mandamus relief against that respondent. The gravamen of Burns’ demand that the BPR dismiss the underlying grievance is a purported lack of evidence to support the charges. Yet even if this is the case, Burns has failed to meet his burden of proving that “he has no other adequate means,” other than a writ of mandamus, “to attain the desired relief.” *Fleming*, 56 V.I. at 464. Nor could he, since even if the BPR were to recommend imposition of discipline, Burns possesses the option to file an objection with this Court, which is empowered to reject the BPR’s recommendation and order dismissal if it were to agree with Burns that the allegations against him are unsupported by the evidence. *See* V.I.S.C.T.R. 207.9(d)(5), (e); *see also In re Elliot*, 54 V.I. 423, 428 (V.I. 2010) (“[A] petitioner cannot claim the lack of other means to relief, if an appeal taken in due course after entry of a final judgment would provide an adequate

alternative to review by mandamus.”) (citing *In re LeBlanc*, 49 V.I. 508, 517 (V.I. 2008)).

¶ 5 We are similarly unpersuaded by Burns’ claim that the BPR has not taken sufficient action to resolve the underlying grievance. We have repeatedly instructed that “the manner in which a court disposes of cases on its docket is within its discretion,” and thus “a trial court’s delay in ruling on a motion will generally not warrant mandamus relief,” *see Elliot*, 54 V.I. at 429, and we see no reason why that same principle should not extend to the BPR. And while “mandamus may be warranted when a trial court’s undue delay is tantamount to a failure to exercise jurisdiction,” *id.* (internal quotations marks and citations omitted), we cannot conclude that the delays in this case are attributable to a refusal of the BPR to exercise jurisdiction over the underlying grievance. The exhibits Burns filed with this Court in support of his mandamus petition reveal that the BPR’s Preliminary Review Committee approved the filing of the ODC’s petition for discipline on November 25, 2020, and that the ODC filed its initial petition with the BPR on December 8, 2020, with Burns and his co-respondent filing answers on January 22, 2021. While the next required step in the disciplinary process is the service of a notice of hearing by the BPR Chair which identifies the members of the hearing panel and sets the date of the hearing, *see V.I.S.Ct.R.* 207.9(d)(3), there is no court rule or other binding legal authority that sets a deadline by which the Chair must issue the notice of hearing. While the failure to issue a notice of hearing nearly 17 months after the respondent has filed an answer is certainly concerning, a long delay—standing alone and without more—does not establish that the BPR has failed to exercise jurisdiction over the grievance. *See Elliot*, 54 V.I. at 430 (“[T]he fact that his petition for writ of habeas corpus remains pending in the Superior Court eighteen months after it was filed does not, in and of itself, demonstrate that the Nominal Respondent has breached his duty.”). Rather, “each situation must be considered on its own facts, with this Court giving primary consideration to the reason for the

delay.” *Id.* (internal quotation marks omitted).

¶ 6 Here, Burns’ mandamus petition and the exhibits attached thereto reveal substantial cause for the delay in issuance of a notice of a hearing. Burns admits in his petition that there are numerous “disputed discovery issues” between Burns, his co-respondent, and the ODC, including “numerous deposition objections” that “range[] the gamut of attorney-client privilege, attorney work-product, legal conclusion, irrelevance, etc.,” as well as a dispute as to whether Burns and his co-respondent are entitled to receive certain materials deemed confidential or privileged. (Pet. 12-13.) Significantly, it appears that Burns, his co-respondent, and the ODC attempted to resolve these issues themselves for more than a year, and that the BPR’s intervention on these issues was not requested until February 13, 2023, when Burns and his co-respondent filed a “Joint Motion to Dismiss (and Request for Oral Argument)” requesting dismissal or, in the alternative, rulings on all these disputed discovery issues. Moreover, correspondence between Burns, his co-respondent, and the ODC attached as an exhibit to the petition reflect that the parties had been in active negotiations to settle the grievance by consent as late as May 2023. Given these outstanding issues—all of which appear to have been initiated by Burns or his co-respondent and were only brought to the BPR’s attention less than four months ago—as well as the possibility that the parties may reach a compromise, the decision of the BPR Chair to not issue a notice of hearing is certainly understandable. We are confident, now that these issues have been brought before the BPR for resolution, that they will be resolved by the BPR in due course. Accordingly, we deny the petition for writ of mandamus.<sup>1</sup>

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<sup>1</sup> Because we deny the mandamus petition on the grounds that Burns possesses other adequate means to obtain the desired relief and that the BPR’s failure to issue a notice of hearing is not tantamount to a failure to exercise jurisdiction over the underlying grievance, we express no

**Dated this 7th day of June, 2023.**

**ATTEST:**

**VERONIA J. HANDY, ESQ.**  
**Clerk of the Court**

**By: /s/ Yanella Culpepper-Callwood**  
**Deputy Clerk II**

**Dated: June 7, 2023**

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opinion as to the merits of any of his claims, including his claim that he is entitled to dismissal of the grievance due to a lack of evidence.