

January

Clerk of the Court

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Jeffrey Bossert Clark
Through Harry MacDougald
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Dear Mr. Clark,

On August 2, 2021, Douglas A. Collins wrote to you in his capacity as an attorney representing President Donald Trump. *See* Exhibit A (the “Collins Letter”). I write to provide an update concerning the letter’s instructions, based on the present circumstances surrounding your upcoming D.C. Bar disciplinary proceeding. *See In re Jeffrey B. Clark, Esquire, Disciplinary* Docket No. 2021-D193.

The Collins Letter noted that in 2021 President Biden decided to attempt to waive executive and other privileges that were in actuality held by President Trump. *See* Exhibit A at 1. In light of President Biden’s purported waiver, Mr. Collins provided specific instructions pertaining to requests for testimony made by the U.S. House of Representatives Oversight Committee and the Senate Judiciary Committee to Justice Department officials in the Trump Administration, including yourself, former Acting Attorney General Jeffrey Rosen, former Principal Associate Deputy Attorney General Richard Donoghue, and other former Justice Department officials. *See id; see also* Exhibit B (*Fox News* article quoting Collins).

The Collins Letter took the position, which I affirm by this letter, that President Biden and the Justice Department’s waivers of President Trump’s privileges were unlawful. *See* Exhibit A at 1. Indeed, in litigation between President Trump and the House Committee investigating events on January 6, 2021, the United States Supreme Court explicitly and unanimously kept open the question of whether a subsequent President could waive a predecessor’s executive privilege. *See Trump v. Thompson*, 142 S. Ct. 680, 680 (2022)¹; *see also id.* (Kavanaugh, J., statement respecting

¹ “The questions whether and in what circumstances a former President may obtain a court order preventing disclosure of privileged records from his tenure in office, in the face of a determination by the incumbent President to waive the privilege, are unprecedented and raise serious and substantial concerns.”

denial of application).²

Notably, Mr. Collins made public statements affirming the intention of the Collins Letter, having been quoted as follows:

‘This is political in the sense that you’re having the DOJ through a whole letter sent to these employees say, you know, we’ve always stood up for this right. We’ve always stood up for this privilege, except in this case and only under these terms,’ Collins told Fox News Tuesday. ‘I would hope they would honor that,’ Collins said when asked whether Rosen and the other officials should withhold certain deliberations from Congress. *‘The former president still believes those are privileged communications that are covered under executive privilege.’*

Exhibit B (emphasis added). As the Collins Letter noted: “[I]f a President were empowered unilaterally to waive executive privilege applicable to communications with his or her predecessors, particularly those of the opposite party, there would effectively be no executive privilege.” *See* Exhibit A at 1.

The concluding paragraph of the Collins Letter advised that “President Trump will agree not to seek judicial intervention to prevent your testimony or the testimony of the five other former Department officials.” Exhibit A at 2. However, because you were never subpoenaed to testify to the House Oversight or Senate Judiciary Committees, never sat for transcribed interviews with these Committees, and seeing that there are no similar pending congressional subpoenas applicable to you, this assertion is now moot.

Additionally, it is my understanding that the D.C. Office of Disciplinary Counsel currently intends to call former Deputy White House Counsel Patrick Philbin as a witness in your disciplinary proceeding. The Collins Letter and the guidance provided therein do not pertain to any such scenario.

Further, the Collins Letter preserved President Trump’s executive privilege rights by not “otherwise waiving the executive privilege associated with the matters [concerning the 2020 election] the Committees are purporting to investigate.” *Id.* at 1.

In light of these circumstances and the pending D.C. Bar disciplinary proceeding against you, which is set to begin before Hearing Committee #12 on March 26, 2024, *see* Exhibit C, we hereby instruct you to maintain President Trump’s executive privilege and other related privileges, including law enforcement privilege, attorney client privilege, and deliberative process privilege.

² “The Court of Appeals suggested that a former President may not successfully invoke the Presidential communications privilege for communications that occurred during his Presidency, at least if the current President does not support the privilege claim. As this Court’s order today makes clear, those portions of the Court of Appeals’ opinion were dicta and should not be considered binding precedent going forward.”

This instruction remains the same with respect to a December 6, 2023 Order from the D.C. Court of Appeals requiring you to comply with an October 2022 document subpoena. *See* Exhibit D.

Please contact me with any questions and keep me apprised of Hearing Committee #12 and any ensuing legal proceedings bearing on President Trump's privilege invocation. I reserve the right for President Trump to intervene in any litigation involving these privileges. As the Collins Letter concluded: "[W]e will take all necessary and appropriate steps, on President Trump's behalf, to defend the Office of the Presidency." Exhibit A at 2.

Sincerely,



EXHIBIT A

JAMES C. WEIDNER
ERNEST H. "BUCKY" WOODS, III
DOUGLAS A. COLLINS

WILLIAM R. OLIVER
(OF COUNSEL)



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August 2, 2021

Mr. Jeff Clark:

We represent former President Donald J. Trump and write concerning requests sent to you by the U.S. House of Representatives Committee on Oversight and Reform and the U.S. Senate Judiciary Committee to provide transcribed interviews on matters related to your service as Deputy Attorney General and Acting Attorney General during President Trump's administration. We also understand that, as set forth in its July 26, 2021, letter to you, the U.S. Department of Justice stated that President Biden decided to waive the executive and other privileges that protect from disclosure non-public information concerning those matters and has authorized you to provide such information.

Please be advised that the Department's purported waiver and authorization are unlawful, and that President Trump continues to assert that the non-public information the Committees seek is and should be protected from disclosure by the executive privilege. The executive privilege applicable to communications with President Trump belongs to the Office of the Presidency, not to any individual President, and President Biden has no power to unilaterally waive it. The reason is clear: if a President were empowered unilaterally to waive executive privilege applicable to communications with his or her predecessors, particularly those of the opposite party, there would effectively be no executive privilege. To the extent the privilege would continue to exist at all, it would become yet another weapon to level the kind of unjustifiable partisan political attacks the Democrat-controlled administration and Committees are seeking to level here.

As the Supreme Court held in *Nixon v. Administrator of General Services*, 433 U.S. 425 (1977) – where, like here, the then-current administration did not support a former President's assertion of executive privilege – the executive privilege is crucial to Executive Branch decision-making:

Unless [the President] can give his advisers some assurance of confidentiality, a President could not expect to receive the full and frank submissions of facts and opinions upon which effective discharge of his duties depends. The confidentiality necessary to this exchange cannot be measured by the few months or years between the submission of the information and the end of the President's tenure; the privilege is not for the benefit of the President as an individual, but for the benefit of the Republic.

Nixon v. Administrator of General Services, 433 U.S. 425, 448-49 (1977). The Department's July 26 letter to you quoted this decision but left out the very next sentence in the opinion: "**Therefore, the privilege survives the individual President's tenure.**" *Id.* at 448-49 (quoting, and adopting, Brief for the Solicitor General on Behalf of Federal Appellees) (emphasis added).

Here, it is clear that even though President Biden and the Department do not know the nature or content of the non-public information the Committees seek, they have not sought or considered the views of the President who does know as to whether the confidentiality of that information at issue should continue to be protected. Such consideration is the minimum that should be required before a President waives the executive privilege protecting the communications of a predecessor. See Office of Legal Counsel Memorandum on Applicability of Post-Employment Restrictions in 18 U.S.C. § 207 to a Former Government Official Representing a Former President or Vice President in Connection with the Presidential Records Act, June 20, 2001, at 5 ("[A]lthough the privilege belongs to the Presidency as an institution and not to any individual President, the person who served as President at the time the documents in question were created is often particularly well situated to determine whether the documents are subject to a claim of executive privilege and, if so, to recommend that the privilege be asserted and the documents withheld from disclosure.").

Nonetheless, to avoid further distraction and without in any way otherwise waiving the executive privilege associated with the matters the Committees are purporting to investigate, President Trump will agree not to seek judicial intervention to prevent your testimony or the testimony of the five other former Department officials (Richard P. Donoghue, Patrick Hovakimian, Byung J. "BJay" Pak, Bobby L. Christine, and Jeffrey B. Clark) who have already received letters from the Department similar to the July 26, 2021 letter you received, so long as the Committees do not seek privileged information from any other Trump administration officials or advisors. If the Committees do seek such information, however, we will take all necessary and appropriate steps, on President Trump's behalf, to defend the Office of the Presidency.

Sincerely yours,
OLIVER & WEIDNER, LLC

Douglas A. Collins

EXHIBIT B

Watch TV

DONALD TRUMP · Published August 3

Trump foreshadows executive privilege fight in election investigations, but won't try to block testimony yet

Letter says DOJ approval for former officials to testify about Trump is 'unlawful'



By Tyler Olson | Fox News



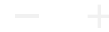
Fox News Flash top headlines for August 3

Fox News Flash top headlines are here. Check out what's clicking on Foxnews.com.

Former President [Trump](#) won't immediately try to stop several former [Justice Department](#) officials from testifying before [Congress](#) but is willing to put up a fight over executive privilege if legislators try to secure further interviews with his former aides and officials, a letter from lawyer Doug Collins reads.

Collins said recent Department of Justice letters purporting to allow former acting Attorney General Jeffrey Rosen and five other officials to testify about their deliberations in relation to Trump's alleged efforts to overturn the presidential election are not based in law. He also threatened to sue in the future if Congress seeks more testimony than it has already requested through the House Oversight Committee and the Senate Judiciary Committee.

"Please be advised that the Department's purported waiver and authorization are unlawful, and that President Trump continues to assert that the non-public information the Committees seek is and should be protected from disclosure by executive privilege," the letter reads.



TRUMP TOLD DOJ OFFICIALS IN DECEMBER 2020 TO CALL ELECTION 'CORRUPT,' NOTES SHOW

"Nonetheless, to avoid further distraction and without in any way otherwise waiving the executive privilege associated with the matters the Committees are purporting to investigate, President Trump will agree not to seek judicial intervention to prevent your testimony or the testimony of the five other former department officials... so long as the Committees do not seek privileged information from any other Trump administration officials or advisors," Collins wrote.

Collins, a former Republican representative from Georgia, has worked with the former president on election issues since last year and is now serving as his attorney. He sent the letter on Monday evening, which was first reported by [Politico](#).

In an interview with Fox News Tuesday, Collins did not directly address why Trump's legal team isn't trying to block the testimony from Rosen and the five other DOJ officials if it is "unlawful." But he railed against the DOJ waiver as "political" and said he hopes the former officials will withhold any information from Congress that would fall under executive privilege.

"This is political in the sense that you're having the DOJ through a whole letter sent to these employees say, you know, we've always stood up for this right. We've always stood up for this privilege, except in this case and only under these terms," Collins told Fox News Tuesday.

"I would hope they would honor that," Collins said when asked whether Rosen and the other officials should withhold certain deliberations from Congress. "The former president still believes those are privileged communications that are covered under executive privilege."



Then-President Trump speaks to supporters from The Ellipse near the White House on Jan. 6, 2021, in Washington, D.C. (BRENDAN SMIALOWSKI/AFP via Getty Images)

KINZINGER SUPPORTS JAN. 6 COMMISSION SUBPOENAS FOR MCCARTHY, JORDAN

The letter from Collins could foreshadow future battles with the Jan. 6 select committee over executive privilege and testimony from his former aides and officials. The members of that committee have indicated that they wish to interview several Trump officials and to learn exactly what the former president was thinking and doing during the attack on the Capitol.

Rep. Liz Cheney, R-Wyo., declared that she wants to obtain "every phone call, every conversation, every meeting leading up to, during, and after the attack."

The DOJ officials besides Rosen who have been asked to speak to Congress are Richard P. Donoghue, Patrick Hovakimian, Byung Jin Pak, Bobby L. Christine, and Jeffrey B. Clark.

They ranged in rank from acting deputy attorney general, which was Donoghue's role, to U.S. attorney, which was Pak's and Christine's rank. Pak and Christine covered the northern and southern districts of Georgia, respectively. Clark and Hovakimian were officials at main Justice under Rosen.

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Several of those six men were shown in documents released by the House Oversight Committee last month as on the receiving end of requests from representatives of Trump, including Chief of Staff Mark Meadows, that they look into claims of voter fraud or bring legal action to overturn state election results.

There has been no evidence of widespread voter fraud in the 2020 presidential election and Trump's false claims that the presidential election was stolen have not been substantiated.

"These documents show that President Trump tried to corrupt our nation's chief law enforcement agency in a brazen attempt to overturn an election that he lost," House Oversight Committee Chairwoman Carolyn Maloney, D-N.Y., said in a statement last month. "Those who aided or witnessed President Trump's unlawful actions must answer the committee's questions about this attempted subversion of democracy."

The Department of Justice declined to comment on the Collins letter.

Tyler Olson covers politics for FoxNews.com. You can contact him at tyler.olson@foxnews.com and follow him on Twitter at [@TylerOlson1791](https://twitter.com/TylerOlson1791).

EXHIBIT C

to an exhibit on authenticity grounds, the parties are directed to meet and confer in a good faith effort to resolve the issue without Committee involvement.

(ii) On or before **January 5, 2024**:

- a. Respondent shall file a preliminary exhibit list and provide Disciplinary Counsel² with a PDF formatted copy of proposed exhibits, with bookmarks for the exhibit numbers. For ease of future reference, all exhibits must be separately paginated, identified by an exhibit number (not an exhibit letter), and should not contain letter prefixes or suffixes. (i.e., C-1, C-2, C-3, or 1A, 1B, 1C). Proposed exhibits shall be accompanied by a List of Exhibits Form (provided by the Office of the Executive Attorney and available at <https://www.dcbbar.org/attorney-discipline/board-on-professional-responsibility/forms-and-documents>). The heading, case information, exhibit numbers, and descriptions shall be typewritten (pursuant to Board Rule 19.8) on the List of Exhibits Form, with the three remaining columns and signatures to be completed at the conclusion of the hearing. **All exhibits must comply with Board Rule 19.8(f), which requires the redaction of certain information.**

² Please note that, as of January 19, 2023, parties will no longer be required to file exhibits with the Office of the Executive Attorney in advance of the hearing, unless otherwise ordered by the Hearing Committee. Rather, pursuant to Board Rule 7.17, the parties will exchange exhibits at least 10 days before the hearing, offer individual exhibits into evidence during the hearing, and file complete sets of admitted exhibits, along with updated exhibit lists, immediately following the hearing. The new Rules are available on the Board's website: <https://www.dcbbar.org/Attorney-Discipline/Board-on-Professional-Responsibility/Rules-of-the-Board-on-Professional-Responsibility>.

- b. Respondent may file any response to Disciplinary Counsel’s objections to his expert witness disclosures.
 - c. Disciplinary Counsel may file any rebuttal expert designation and report, conforming to the standards set forth in D.C. Superior Court Rule 26(a).
 - d. If Respondent has filed notice under Board Rule 7.6(a) of intent to offer evidence of disability in mitigation of sanction pursuant to Board Rule 11.13, Respondent shall serve on Disciplinary Counsel a list identifying any witnesses Respondent intends to call in support of the disability mitigation claim (with summaries of their testimony) and copies of any exhibits that Respondent intends to offer in support of the disability mitigation claim. Respondent shall not be required to file this witness list or exhibits with the Hearing Committee at that time, unless Respondent has decided to disclose to the Hearing Committee the intent to raise an alleged disability in mitigation of sanction. *See* Board Rule 7.6(b). Disciplinary Counsel’s disability-related witness list and exhibits shall be filed after Respondent completes the presentation of disability-related evidence, or at such other time as the Hearing Committee may direct.
- (iii) On or before **January 12, 2024**, Disciplinary Counsel may file and serve on opposing counsel any objection to the authenticity of Respondent’s proposed exhibits and the grounds therefor. Any written objection to proposed exhibits shall include a copy of the relevant exhibit(s). To the extent either party intends to object to an exhibit on authenticity grounds, the parties are directed to meet and confer in a good faith effort to resolve the issue without Committee involvement.

- (iv) A pre-hearing conference will be held on **January 16, 2024 at 10:15 a.m.**, via Zoom video conference, in accordance with Board Rule 7.24, and will be live-streamed on the Hearing Committee's YouTube channel.
- (v) No later than March 1, 2024, the parties will conference to determine if they are able to agree to any stipulations of fact. If the parties are able to reach such an agreement, then the parties may file any such stipulations on or before **March 8, 2024**. Regardless, **prior to the close of the evidence**, the parties shall confer and file any stipulations of fact to which they have agreed.
- (vi) The hearing will be held in this matter on **March 26 – 29, 2024 and April 1 - 5, 2024**, beginning at **9:30 a.m.** each day. The parties shall appear promptly at that time.
- (vii) Prior to the conclusion of the hearing in this matter, the parties shall meet and confer regarding the disposition of any exhibits offered into evidence, and shall raise any disagreements with the Hearing Committee so that any dispute regarding the disposition of any proffered exhibit can be resolved before the hearing concludes. **Within seven days following the conclusion of the hearing, each party shall file (1) a completed, signed exhibit form showing which exhibits moved, excluded, and not offered into evidence, and (2) provide the Office of the Executive Attorney with a PDF formatted copy of their admitted exhibits and a PDF formatted copy of their excluded exhibits.** Any exhibits filed under seal shall be accompanied by a redacted version for inclusion in the public record, and any such sealed exhibit shall be clearly designated on the parties' exhibit lists.

The parties are directed to avoid scheduling conflicting matters and shall inform any court/administrative agency of the prior commitment to the disciplinary system. Any motion to continue the hearing shall be made in writing and filed with the Board Office for transmission to the Hearing Committee Chair **at least seven (7) days** before the hearing date, and will be granted only for good cause shown. *See* Board Rule 7.10. The Hearing Committee shall not consider any oral request for a continuance absent the most unusual emergency circumstances. *See* Board Rule 7.10.

It is so Ordered.

HEARING COMMITTEE NUMBER TWELVE

By: Merril Hirsh
Merril Hirsh
Chair

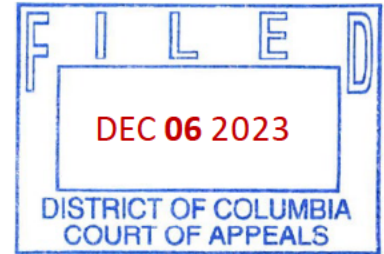
cc:

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EXHIBIT D

District of Columbia Court of appeals



No. 22-BG-0891

In re JEFFREY B. CLARK, ESQUIRE,

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

DDN: 2021-D193

BEFORE: Howard and AliKhan, Associate Judges, and Glickman, Senior Judge.

ORDER

On consideration of Disciplinary Counsel's motion to enforce the subpoena duces tecum in Disciplinary Docket No. 2021-D193; respondent's opposition to the motion to enforce the subpoena; Disciplinary Counsel's reply to respondent's opposition; respondent's motion to continue abeyance of proceedings before this court and/or defer proceedings before the Board on Professional Responsibility; Disciplinary Counsel's lodged opposition to the motion to continue abeyance; respondent's motion for leave to exceed page limitations for the lodged reply in support of the motion to continue abeyance; respondent's lodged reply in support of the motion to continue abeyance; respondent's motion to expedite ruling on motion to continue abeyance; Disciplinary Counsel's motion to supplement the record; respondent's opposition to Disciplinary Counsel's motion to supplement; respondent's motion to take notice of a filing to Hearing Committee Twelve; Disciplinary Counsel's notice of remand; respondent's emergency supplement to June 12, 2023, motion to continue abeyance of proceedings before the court and/or defer proceedings before the Board on Professional Responsibility; Disciplinary Counsel's response to the emergency motion to supplement; respondent's reply in support of the emergency motion to supplement; Disciplinary Counsel's notice of District of Columbia Circuit Court's denial of stay; and in light of the rulings of the United States District Court for the District of Columbia and the Court of Appeals for the District of Columbia Circuit in *In re Jeffrey Clark*, No. 23-7073 (D.C. Cir. Oct. 26, 2023), it is

ORDERED, sua sponte, that the clerk shall file Disciplinary Counsel's lodged

No. 22-BG-0891

opposition to the motion to continue the abeyance. It is

FURTHER ORDERED that respondent's motion for leave to exceed the page limitation for the lodged reply in support of the motion to continue abeyance is granted and the clerk shall file the respondent's lodged reply. It is

FURTHER ORDERED that Disciplinary Counsel's motion to supplement the record is granted and the respondent's statements are included in the record of No. 22-BG-0891, *In re Jeffrey Clark*. It is

FURTHER ORDERED that the respondent's motion to continue abeyance of proceedings before this court and/or defer proceedings before the Board on Professional Responsibility is denied. It is

FURTHER ORDERED that the respondent's motion to expedite the ruling on the motion to continue abeyance is denied as moot. It is

FURTHER ORDERED that respondent's motion to take notice of a filing to Hearing Committee Twelve is granted. It is

FURTHER ORDERED that within 10 days of the date of this order, the respondent shall produce all documents and files described in Disciplinary Counsel's subpoena duces tecum and shall comply with the terms and conditions of the subpoena.

PER CURIAM

Copies e-served to:

Charles Burnham, Esquire

James T. Phalen, Esquire
Executive Attorney
Board on Professional Responsibility

Lucy Pittman, Esquire
Chair
Board on Professional Responsibility

No. 22-BG-0891

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