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**SUPREME COURT
OF THE VIRGIN ISLANDS**



**JUSTICE
EQUALITY
HUMANITY**

**FISCAL YEAR 2017
BUDGET STATEMENT**

**THE JUDICIAL COUNCIL OF THE VIRGIN ISLANDS
AND
THE SUPREME COURT OF THE VIRGIN ISLANDS**

June 30, 2016

OPENING STATEMENT
THE HONORABLE RHYS S. HODGE
CHIEF JUSTICE OF THE VIRGIN ISLANDS

BUDGET FOR THE FISCAL YEAR 2017

OF

THE SUPREME COURT OF THE VIRGIN ISLANDS

AND

THE JUDICIAL COUNCIL OF THE VIRGIN ISLANDS

BEFORE THE COMMITTEE ON FINANCE

THIRTY-FIRST LEGISLATURE

JUNE 30, 2016

Good afternoon Honorable Senator Clifford Graham, Chairman of the Legislature's Committee on Finance, other Honorable Members of the Committee on Finance, Honorable Senators of the 31st Legislature present, Members of the Judiciary, Staff and members of the audience. I am Rhys S. Hodge, Chief Justice of the Virgin Islands.

The Fiscal Year 2017 budget requests for the Supreme Court, the Judicial Council, and the Superior Court were timely submitted by this Court to the Governor and the Legislature on May 28th, 2016, as required by law. The Superior Court has requested \$33,987,310 to fund its operations in Fiscal Year 2017. Although the Legislature passed Bill No. 31-0255 yesterday, the administrations of the Supreme Court and Superior Court were not unified when the courts prepared their Fiscal Year 2017 budget requests. Thus, the budgets for each court were prepared separately, and the Superior Court will appear later today before you to present and defend its

budget request.

On behalf of the Justices and employees of the Supreme Court, I thank you for the opportunity to appear before this Committee to present the Fiscal Year 2017 budget requests for the Supreme Court of the Virgin Islands and the Judicial Council of the Virgin Islands.

I am privileged to have present with me today the Honorable Maria M. Cabret, Associate Justice of the Supreme Court, Veronica Handy, the Clerk of the Supreme Court, Regina Petersen, the Administrative Director for the Supreme Court, Kevin Williams the Deputy Administrator for Technology Services, Kimlyn Etienne, Chief Financial Officer, Koya Ottley, the Human Resources Director for the Supreme Court, and Attorney Tanisha Bailey-Roka, Chief Disciplinary Counsel. In addition, the Honorable Geoffrey Barnard, Recalled United States Magistrate Judge of the District Court of the Virgin Islands joins us in support of the request made by the Judicial Council to fund the librarians for the District Court libraries.

JUDICIAL COUNCIL OF THE VIRGIN ISLANDS

The Judicial Council of the Virgin Islands is a statutory body comprised of the three justices of the Supreme Court, the Presiding Judge and another judge of the Superior Court, the Chairman and Vice-Chairman of the Legislature's Committee on Rules and Judiciary, the Attorney General, the Chief Public Defender, the President and President-Elect of the Virgin Islands Bar Association, and the Executive Director of Legal Services of the Virgin Islands. The Chief Justice serves as the Chairman and the Clerk of the Supreme Court serves as Secretary of the Judicial Council. The purpose of the Judicial Council is to survey the condition of business in the courts and to submit recommendations to simplify and improve the administration of justice in the Virgin Islands.

The Judicial Council, in addition to its role of surveying the state of justice in the Territory,

serves as the entity through which funding for the salaries of two librarians who staff the District Court law libraries on St. Croix and St. Thomas is provided. Accordingly, the Judicial Council is requesting an appropriation of \$114,630.00 to continue to fund those two positions in Fiscal Year 2017. The sum requested includes \$71,986.00 for personnel services and \$42,644 for employer contributions. The amount requested includes a modest 5% percent salary increase for these two employees, who have also labored under the myriad of reductions in their take home pay, on account of increases in the employee share of health insurance and retirement contributions. It is both appropriate and necessary to seek parity on behalf of these two dedicated Judicial Council employees.

The Governor has recommended an appropriation of \$108,161 for the Judicial Council, and while this recommendation is consistent with the appropriation from the previous Fiscal Year, it is inconsistent with current efforts to increase morale and award long delayed salary increases across government. These two Librarians continue to provide an invaluable service to both the legal community and the public at large, and deserve the same consideration afforded other employees in government. This request takes into account the fiscal constraints facing the government, and is reasonable and necessary to cover the salaries of these 2 employees.

SUPREME COURT OF THE VIRGIN ISLANDS

The Supreme Court of the Virgin Islands, consisting of a Chief Justice and two Associate Justices, is the highest court in the Territory of the United States Virgin Islands. In addition to hearing all appeals from final judgments and certain interlocutory orders of the Superior Court, the Supreme Court considers original proceedings filed directly with it, such as actions for mandamus and habeas corpus, and also has the responsibility for regulating the practice of law in

the Virgin Islands. Through its Chief Justice, the Supreme Court is statutorily charged with exercising general oversight over the entire Judicial Branch of the Government of the Virgin Islands, a charge that this Court has been unable to perform as a result of the conflicting statutorily imposed separation of the administrations of the Supreme and Superior Courts.

The Supreme Court has documented its accomplishments in the Fiscal Year 2015 Annual Report on the State of the Judiciary. A copy of that published report has been provided to all Senators along with our Fiscal Year 2017 budget request, and is also available on the Court's website at www.visupremecourt.org. Accordingly, during the course of this testimony I will not belabor this Committee with the details of our operations over the past Fiscal Year but will only provide a brief overview of the performance trends in core areas with comparative data reported in the previous Fiscal Year.

When we examine court performance, most attention is focused on caseload statistics. However, the entire case management process could not occur efficiently nor effectively without 3 critical components: 1) highly skilled and valued personnel; 2) advanced technology; and 3) adequate funding which is necessary to obtain and sustain components 1 and 2. In this testimony, I will begin where we left off last year, with a discussion on the personnel challenges faced by the Supreme Court, and what the Court hoped to accomplish with increased funding in the current Fiscal Year.

Human Resources

Sixty four (64) full time positions were originally identified as necessary to accomplish the critical functions of the Supreme Court's operations. Since then the number of positions has grown to 75 based on need, but nonetheless, 26% of its required positions have consistently

remained vacant due to the lack adequate funding. As of May 31, 2016, there are 44 court employees and 1 Senior Citizen Employment Program volunteer. As of June 20th, the Court has also accepted 1 second year law student summer intern, 1 Summer Intern through the Department of Labor and will be partnering with Senator Sanes's office for the placement of another intern.

Historically, appropriation levels have impeded the Court's ability to fill critical vacancies. Within the last nine years, the Court has lost a staggering 43% of its skilled talent, most of whom have voluntarily left for higher paying jobs. There are extremely high demands placed on a developing and maturing court. Consequently, our core employees are highly experienced and skilled in their respective areas and are extremely marketable to other employers. Because the Supreme Court is a relatively small organization, several of its divisions are staffed by no more than 3 persons and in many, by a single employee. Accordingly, the loss of any one employee has a significant impact on the court's operations. To put this in perspective, during Fiscal Year 2015 alone, the Court experienced an unprecedented 11% turnover rate. The areas affected were Financial Services, the Office of Disciplinary Counsel, Supreme Court Marshals, and Information Technology, which has seen the highest turnover in the past three years.

Despite the continued challenges, the Court has made significant strides in filling some of its critical vacancies. The positions of Administrative Director and Chief Financial Officer had been vacant since May and August of 2013 respectively, and the Court delayed filling these positions in part due to ongoing efforts to unify the administrations of the courts. However, as the Court's responsibilities continued to expand, it became more and more difficult to operate without filling those two critical vacancies. Accordingly, in February of Fiscal Year 2015, the Supreme Court appointed Regina Petersen as the Administrative Director and in October, hired Kimlyn Etienne as the Chief Financial Officer.

Additionally, with the implementation of reforms to the disciplinary system in January of 2015, Attorney Delphine Farr-Janey was appointed as the Chief Disciplinary Counsel. The Office of Disciplinary Counsel had historically been an office of 1, but anticipating growth in this area, when I appeared before this body last year, I announced the Court's intent to fund a Deputy Disciplinary Counsel position to address the caseload, remedy issues of conflict of interest, and reduce the legal fees incurred for outside counsel in cases of recusal. However, in addition to insufficient funding to fill this request, Attorney Janey resigned effective July 2015 and the Court had to shift its focus to staffing the office. The position of Chief Disciplinary Counsel was filled in November with the hiring of Attorney Tanisha Bailey-Roka. While the Administrative Director resides on St. Thomas, both the Chief Financial Officer and the Chief Disciplinary Counsel reside on St. Croix.

When I appeared before this Committee last year, I specifically addressed the importance of the implementation of the Court's Classification and Compensation Plan, as a significant performance geared measure, not only to address morale and redress the effect of inflation and contribution increases on employees, but as a tool to remain competitive in the job market and the battle over employee retention. The Court received an appropriation increase of \$200,000 over the prior Fiscal Year. However, in addition to implementing the Classification and Compensation plan, the Supreme Court was also faced with having to fill the critical vacancies of a Chief Financial Officer and Chief Disciplinary Counsel. Accordingly, the Court strategically postponed implementation of the plan from October 1, 2015 to January of 2016, which enabled it to fill these critical vacancies during the first quarter of Fiscal Year 2016, and provide relief to its employees from the additional 1% increase in the employee's share of retirement which became effective in January. Savings realized from the delayed implementation of the plan further enabled the Court

to grant an across-the-board 5% increase for all regular court employees. I must emphasize however, that the increases awarded were not merit increases, but an attempt by this Court to offset the myriad of reductions in pay experienced by its employees over the past 3 years, due to increases in the employee's share of retirement and rising health insurance costs.

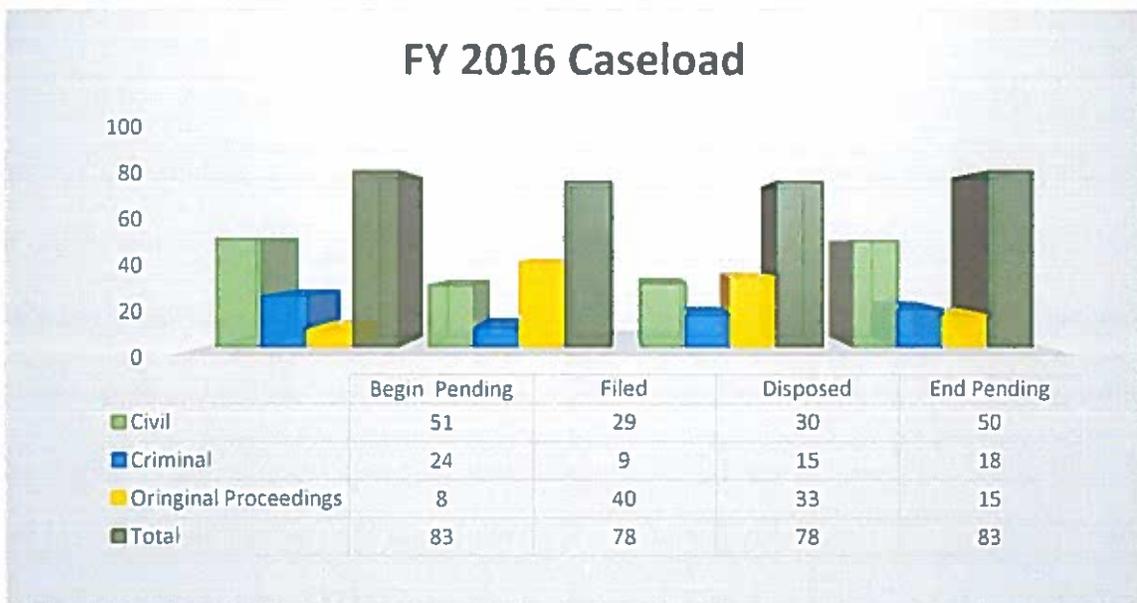
The Supreme Court conducts performance evaluations of its employees on an annual basis, and our employees deserve meritorious increases based on consistent professional performance, and regularly meeting performance benchmarks as outlined for them by their respective managers. In fact, consistent with the Court's personnel rules, the current employee evaluation period closes today on June 30th, and the evaluation process is generally completed during the fourth quarter of the Fiscal Year to align with the budget. Accordingly, the Supreme Court has included the meritorious step increase in its Fiscal Year 2017 personnel budget request, and funding provided, will allow the Court to make those awards as applicable.

On behalf of the Justices and the employees of the Supreme Court, I would like to take this opportunity to thank Senator Graham and the members of the Committee on Finance for providing \$200,000 in supplemental funding in Fiscal Year 2016 towards the restoration of the 8% cut. However, I must emphasize that complete restoration of the 8 % would have resulted in an appropriation increase of approximately \$486,842, and that had full funding been restored, the Supreme Court would have been poised to implement the Classification and Compensation Plan effective October 1st as originally intended, and perhaps even commenced the process of awarding its employees the meritorious increases they deserve. I would also like to thank the Division of Personnel, specifically Director Potter and his staff, for personally meeting with our administrative team, understanding our vision and intent, and working seamlessly with the Court to process the paperwork necessary to appropriately classify our term employees, and process the NOPAs for

placement on the Supreme Court’s Classification and Compensation Plan.

Performance: Court Statistics

When I appeared before this body last year, I testified that Fiscal Year 2014 had been the most productive year in the Supreme Court’s history with 129 new cases being filed, and final judgments being issued in a remarkable 154 cases. In 2014 the Court issued an unprecedented 94 formal opinions. I also testified at that time, that as of May 31, 2015, the Supreme Court had already received 76 new cases, issued 66 final judgments and produced 31 formal opinions. As of May 31st of the current Fiscal Year, the Supreme Court has received 78 new cases, issued 78 final judgments, and has produced 33 formal opinions. Additional information about our caseload is shown in the following table, as well as in our Annual Report.



The Supreme Court continues to maintain an overall combined efficiency rating for all fiscal years of well above 90%: the clearance rate for civil appeals is 91%; the clearance rate for criminal appeals is 95%; and for matters of original jurisdiction, the clearance rate is 94%. This

rate of success is attributed to our cadre of competent employees, efficient and effective case management processes, and a competent and effective case management system.

Professional Regulation

The Virgin Islands Supreme Court maintains the exclusive jurisdiction to regulate the legal profession in the Virgin Islands, including attorney and judicial discipline. Supreme Court Rules 207 and 209 vest the Office of Disciplinary Counsel with authority to investigate and prosecute complaints against Virgin Islands judges, magistrates, and justices, as well as grievances against members of the Virgin Islands Bar. Complaints against judicial officers are adjudicated by the Virgin Islands Commission on Judicial Conduct—an independent agency within the Judicial Branch—while grievances filed against attorneys are heard by the Board of Professional Responsibility and/or the Board of the Unauthorized Practice of Law pursuant to recent amendments promulgated to Rules 203, 209 and the addition of Rule 212. As of May 31, 2016, no complaints for judicial disability, discipline, or incapacity have been filed.

The Office of Disciplinary Counsel, together with the Boards of Professional Responsibility and Unauthorized Practice of Law, remain dedicated and committed to resolving complaints against attorneys in a timely manner. As of May 31, 2016, the Office of Disciplinary Counsel has a total pending caseload of 135 attorney discipline cases.

The Supreme Court also administers the Virgin Islands Bar Examination, in conjunction with its Office of Bar Admissions and the Committee of Bar Examiners. In the current reporting period the Court has conducted two Bar Admission Ceremonies and 31 new attorneys were sworn in as members of the Virgin Islands Bar Association. Additionally, the Virgin Islands Bar Examination was administered on February 24-25, 2016 to 26 applicants, of which 18—or 69%—

were successful. The next administration of the Bar Exam will occur on July 26-27, 2016. Additionally, the Office of Bar Admissions processed 258 requests for certificates of good standing, 16 requests for status changes, and 10 continuing legal education petitions.

Technology

Several members of this Committee have had an opportunity to view the facilities of the Supreme Court and have witnessed, in many instances, the capabilities of the Court's technological infrastructure. We encourage and invite those who have not had the opportunity to visit our facilities, to do so as well. Our technology, which includes, but is not limited to a user-friendly and informative website, a publically accessible electronic docket, electronic filing system, electronic document management and routing, electronic payments, live streaming of oral arguments over the internet, videoconferencing and remote appearances, allows us to maintain a level of access and transparency that is unprecedented both in the local judiciary, and in this government. These technological advancements require maintenance and support services which are costly, and which, by the very nature of the technology industry, increase annually. Accordingly, I must continue to emphasize that the inability to protect these types of technological investments with adequate funding in the present, only serves to increase expenses in subsequent fiscal years.

During the Fiscal Year 2016 Budget cycle, I informed this body that a considerable amount of the Court's technological infrastructure needed to be upgraded with some components requiring replacement as they were quickly becoming obsolete. However, because all of the Court's funding needs were not met in the 2016 appropriation, the Court implemented a phased approach to its infrastructure upgrades. Accordingly, while the Court did replace some of the virtual application servers which host the core applications for case and business management, other equipment

purchases had to be deferred to Fiscal Year 2017. In addition, over the past few years of austere budgets, the Court has adopted a strategy of negotiating multi-year service and maintenance agreements, in order to lock in greater discounts over time. Nonetheless, the Court continues to experience financial difficulty in maintaining critical support and maintenance services for successive periods. Alternatively, the Court would have to pay a much higher premium for single year coverage, and paying such amounts upfront, limits the Court's flexibility to deal with emergent or otherwise unanticipated expenses. For example, enhancements to the case management system are not covered under our maintenance and support contract. Accordingly, our budget request includes an additional \$105,000 representing 500 programming hours to ensure dedicated funding for enhancements to the system.

On January 1, 2016, the Supreme Court launched Phase I of its Annual Attorney Registration Statement (ARS) project, which requires all active attorneys to provide current contact information with the Office of Disciplinary Counsel. To date 367 attorneys have successfully completed the electronic registration and filing process. As part of Phase II of the project, the Supreme Court will begin issuing a registration card to members of the Virgin Islands Bar Association who register, to verify that they are an active member authorized to practice law. The registration card evinces the member's name, Bar Number, membership status, type of admission and registration period and type of admission.

Facilities

The construction of a Supreme Court courthouse on the on the island of St. Croix remains an unfunded mandate. Although the Supreme Court has invested approximately \$625,000 to date for the courthouse project, the total cost of the project is estimated to be \$35.4 million. Most

recently, the Court transmitted a copy of its capital project plan to Governor Mapp in June of 2015, and we continue to await formal action on the proposal.

In the interim, the Court's operations continue to grow, as does the demand for services, support and repairs. On the island of St. Croix, the Supreme Court has begun to expend considerable sums in repairs to obsolete air handlers, which were existing at the time the Supreme Court purchased the building located at No. 18 Strand Street Frederiksted. Likewise, the St Thomas facility also requires extensive cleaning of the air conditioning ventilation systems as part of a comprehensive maintenance plan. In the coming Fiscal Year, the Court expects to expend approximately \$100,000 to replace the air conditioning system on St. Croix, and has solicited proposals for the services required on St. Thomas.

Fiscal Year 2017 Budget Request

For Fiscal Year 2017, the Supreme Court requests an appropriation of \$10,212,444, which is broken down as follows: \$5,278,959 for all personnel services, \$1,822,466 for employer contributions, \$916,019 for services other than personnel, \$740,000 for equipment and structural repairs, \$1,345,000 for all other operating expenses, \$15,000 to fund the Commission on Judicial Conduct, \$15,000 to fund the activities of the Board of Professional Responsibility, \$15,000 to fund the activities of the Board of the Unauthorized Practice of Law, and \$65,000 in miscellaneous expenses. This amount includes projected costs associated with the expansion of the appellate bench from 3 to 5 justices provided for in Bill No. 31-0255, which passed the Legislature yesterday and awaits the Governor's signature. These costs include additional staff for each chamber, and equipment and other expenses required to accommodate such expansion. Specifically, in order to be properly staffed, each chamber would require a judicial secretary, law clerks, and security with

an estimated personnel cost per chamber of \$630,182.50. Associated operational and equipment costs, to include minor buildouts, are projected to be approximately \$273,050 and would be a one-time expense. If separately appropriated, the total estimated cost for 2 additional Justices and staff \$1,533,415. Although Bill No. 31-0255 had not passed the Legislature when we prepared our budget request, the Bill provides for the expansion of the Supreme Court to occur effective October 1, 2016, and thus we were required to account for these expenses in our Fiscal Year 2017 budget request.

If, for whatever reason, the 2 additional Justice positions authorized by Bill No. 31-0255 are not to be filled during Fiscal Year 2017, then the budget request for Fiscal Year 2017 is adjusted to \$8,679,029, broken down as follows: \$4,219,479 for all personnel services, \$1,562,125 for employer contributions, \$916,019 for services other than personnel, \$530,000 for equipment and structural repairs, \$1,331,406 for all other operating expenses, \$15,000 to fund the Commission on Judicial Conduct, \$15,000 to fund the activities of the Board of Professional Responsibility, \$15,000 to fund the activities of the Board of the Unauthorized Practice of Law, and \$65,000 in miscellaneous expenses, shown in the following table. This request is less than the \$8,790,889 that the Supreme Court requested for Fiscal Year 2016.

FUNDING CATEGORIES	AMOUNT REQUESTED
All Personal Services	\$ 4,219,479.00
Employer Contributions	\$ 1,562,125.00
Operating Expenses	\$ 1,341,406.00
Services Other Than Personnel	\$ 916,019.00
Capital Expenditures	\$ 530,000.00
Funding for Boards & Commissions	\$ 45,000.00
Miscellaneous Expenses	\$ 65,000.00
TOTAL	\$ 8,679,029.00

In the Fiscal Year 2017 Executive Budget, Governor Mapp has recommended an

appropriation of \$6,600,161 for the operations of the Supreme Court. I would like to take this opportunity to thank the Governor for increasing the funding recommendation for the Supreme Court, as well as the OMB Director, Nellon Bowry, and his staff for their careful review and consideration of the materials submitted by our administrative staff to substantiate the various needs of this Court. However, this recommendation is 35% less than the total expanded request submitted for Fiscal Year 2017, and 24% less than \$8,679,029 necessary to adequately fund the Court's operations without the additional chambers.

The Supreme Court initiated operations on December 18, 2006 with the swearing of the three initial justices. This year 2016, marks the 10th Anniversary of the assumption of operations, and the record of this Court's accomplishments within this relatively short period of time is well established. The Supreme Court continues to improve upon its already strong performance every year, and it has done so successfully and repeatedly, even with austere budgets. This Court has and continues to be a good steward of the funds appropriated to it. Accordingly, in setting an appropriation for the Supreme Court for Fiscal Year 2017, I ask that you consider the Court's record of performance, the existing investment in its technological infrastructure, and its consistent successful management of the funds appropriated. Should this Committee determine that it is unable to appropriate the \$10,212,444 requested, or the \$8,679,029, which represents no expansion in the appellate bench, I ask that you consider appropriating no less than the \$7.5 million dollar floor that I have repeatedly stated to this Committee is adequate and necessary to fund the operations of the Territory's Court of last resort.

I, as well as members of our administrative team, remain available to answer any questions you may have. Thank you.

