

**TESTIMONY OF
HON. RHYS S. HODGE, CHIEF JUSTICE,
SUPREME COURT OF THE VIRGIN ISLANDS**

ON

**BILL NO. 31-0176, AN ACT AMENDING TITLE 3 VIRGIN ISLANDS
CODE, CHAPTER 25 ADDING SUBCHAPTER IVA ENACTING THE
VIRGIN ISLANDS PUBLIC OFFICIALS COMPENSATION ACT**

**BEFORE
THE THIRTY-FIRST LEGISLATURE
COMMITTEE ON GOVERNMENT SERVICES, CONSUMER AND
VETERANS AFFAIRS**

**ON
JANUARY 22, 2016**

Good Morning, Honorable Chairman Harrigan, Honorable Members of the Committee on Government Services, Consumer and Veterans Affairs, Honorable Members of the 31st Legislature present, Legislative staff, ladies and gentlemen.

I am Rhys S. Hodge, Chief Justice of the Virgin Islands, and it is my pleasure to accept your invitation to appear before this Honorable Committee on behalf of the Supreme Court to provide our input on Bill No. 31-0176. We respectfully request that the measure be amended to establish a separate Commission on Judicial Compensation.

Adequate compensation is essential to attracting and retaining talented individuals to serve at the highest levels of Virgin Islands government. Judges, however, are different from senators and Executive Branch officials. The Legislative Branch has the power to pass laws, including

appropriating money. The Executive Branch proposes the Executive Budget, and may veto legislation. The Judicial Branch does not have any comparable tools at its disposal. It is the only branch of government that is entirely dependent on the other branches for the financial aspects of operations, including salaries.

Judges are different from other officials in another important respect. Several of the factors in Bill No. 31-0176 that are intended to guide the commission—such as the median household income—although relevant for setting Legislative and Executive Branch salaries, are of only limited utility when applied to judges. While Legislative and Executive Branch officials may come from all walks of life, every judge must be a licensed attorney. It is no secret that a highly-skilled attorney has the potential to earn a substantial amount of money in the private sector. But to become an attorney, an individual must spend at least seven years of his life in college and law school—incurring significant debt in the process, which for today’s graduates could be as much as \$200,000—before even being able to sit for the bar exam. And unlike other government officials, judges are forbidden from earning outside income from a private law practice or other business; in fact, a judge may not even accept an honorarium or speaking fee.

The National Center for State Courts has identified four key factors that should govern judicial compensation: equity, regularity, objectivity, and separation from politics. The National Center describes these objectives as follows:

Equity: Careers in public service demand sacrifice, and those who join the bench must be ready to forego the more lucrative compensation available in the private sector. Nonetheless, judicial salaries should be broadly comparable to the remuneration received by attorneys taking similar career paths and by other public servants having comparable responsibility, training and experience.

Regularity: The real value of judicial compensation should be maintained through adjustments that respond to inflation so that the salary a judge accepts upon joining the bench is not eroded to the detriment of his or her family. Equity is rarely possible in the absence of regular reviews that respond to cost-of-living increases.

Objectivity: Judicial compensation should be set and revised by reference to an agreed-upon set of objective criteria that can be easily evaluated by the public. The process also should be transparent to the public.

Separation From Politics: Decisions on judicial compensation should not be a basis for expressing Legislative or Executive Branch dissatisfaction with specific court decisions. Nor should judicial pay be adversely affected because of disagreement between the Legislative and Executive Branches over policy issues unrelated to the compensation of public officers. Failure to raise judicial compensation or provide cost-of-living adjustments is an inappropriate method for holding judiciaries accountable.

Having an independent commission recommend the appropriate salary levels for judges is a step in the right direction. However, it is not ideal to have judicial salaries reviewed by the same commission that reviews executive and legislative salaries, utilizing identical criteria. As the National Center has recognized, the factors that should guide the setting of judicial salaries are different from those that should govern legislative and executive salaries. Although ideally one would take a holistic approach and determine the compensation for each individual position based only on the factors applicable to that specific position, this has rarely been the case in practice. For example, in New York, judicial salaries were arbitrarily tied to legislative salaries from 1977 to 2010. Because there was rarely a need to raise legislative salaries since even legislators in New York were permitted to supplement their government salaries with outside employment, New York judges were denied even routine cost-of-living increases during this period, and New York fell to 48th in the nation for judicial compensation. In fact, during this period, hundreds of non-judicial support staff—including law clerks—earned larger salaries than the judges they worked for. As a result, it was extremely difficult for New York to recruit and retain good judges.

The American Bar Association, in a 2003 resolution adopted by its House of Delegates, recommends that “compensation levels for the judiciary . . . be considered separately” from executive and legislative officials, and that judicial compensation “commissions should determine

compensation levels only for justices and judges.” The reason for this separation is that commissions tasked with recommending salaries for all executive, legislative, and judicial officials often fail to consider the four factors endorsed by the National Center for State Courts, and in some extreme cases simply tie judicial salaries to the salaries of some other position without conducting a more nuanced analysis. Several states, such as Alabama, Connecticut, Hawai’i, Iowa, Louisiana, Maine, Maryland, and New York, have established independent judicial compensation commissions in line with the ABA’s recommendations.

Bill No. 31-0176 also does not provide that the compensation commission’s recommendations automatically go into effect; instead, its report is only advisory, and the Legislature must expressly enact any salary change through legislation. This eliminates one of the main benefits of a compensation commission: decoupling salaries of public officials from the political process. The system for setting compensation cannot be separated from the political process if the legislature can veto the commission’s recommendation by simply doing nothing.

The American Bar Association recommends that “[c]ommissions should have the authority to set compensation levels,” so that “[t]heir recommendations . . . have the force of law unless rejected by a two-thirds majority legislative vote within a fixed period of time following receipt of the commission’s report.” The ABA has taken this position because “[i]f a commission’s recommendations are merely advisory, they are too often easily ignored by state legislatures.” In other words, a commission that only has the power to provide a non-binding recommendation essentially has no power at all.

For these reasons, Bill No. 31-0176 should be substantively amended. Judicial salaries should be considered separately from those of other officials, preferably by a different commission than the commission charged with reviewing executive and legislative salaries. If a separate

commission is not established, Bill No. 31-0176 should at least include specific, enumerated factors that the commission must consider with respect to judicial salaries, such as those identified by the ABA and the National Center. And to ensure that judicial salaries are set independently of politics, Bill No. 31-0176 should be amended to provide that any recommended salary increase should go into effect automatically unless expressly rejected by a supermajority the Legislature.

In the alternative, the Legislature can consider methods for independently setting judicial salaries outside of the traditional political process other than establishing a commission. For example, the salaries of Virgin Islands justices, judges, and magistrates could be tied to the salaries of federal justices, judges, and magistrate judges. In fact, in its most recent report, the New York Commission on Judicial Compensation found “that the appropriate benchmark at this time for the New York State judiciary is the compensation level of the Federal judiciary” because “[t]he Federal judiciary sets a benchmark of both quality and compensation [and] New York State should seek to place its judiciary on par.”

To the extent that this Committee chooses not to include any of these recommended amendments and moves forward with the bill in its current form, I ask that it at least consider some technical amendments as it relates to the Judiciary. Internal section 541(c) includes the position of “Chief Magistrate” within the definition of “Government Officials,” but no such position exists. Likewise, at various points the bill uses titles for judicial offices that are inconsistent with those in title 4 of the Virgin Islands Code, such as “judges of the Supreme Court,” “justices and magistrates of the Superior Court,” and “magistrate judges.” These should either be corrected, or replaced with a more generic term, such as “judicial officers.” Similarly, the last sentence of internal section 544(a)—which states that “[t]he compensation of a judge may not be diminished during the judge’s official term”—should be corrected to include justices and magistrates, or just refer to “judicial

officers.”

I have included along with my testimony a copy of the ABA resolution, the judicial compensation commission statute enacted by New York, which could serve as a model for a judicial compensation commission in the Virgin Islands. I remain available to answer any questions which you may have. Thank you.