

OPENING STATEMENT
THE HONORABLE RHYS S. HODGE
CHIEF JUSTICE OF THE VIRGIN ISLANDS
BUDGET FOR THE FISCAL YEAR 2024
OF
THE JUDICIAL BRANCH OF THE VIRGIN ISLANDS
BEFORE THE COMMITTEE ON FINANCE
THIRTY-FIFTH LEGISLATURE

JULY 19, 2023

Good morning Senator Frett-Gregory, Chairperson of the Committee on Budget, Appropriations and Finance, Members of the Committee and other Members of the 35th Legislature present, Members of the Judiciary, Staff, and others present in the audience. I am Rhys S. Hodge, Chief Justice of the Virgin Islands. As head of the Judicial Branch of the Virgin Islands, I thank you for the opportunity to appear before this Committee to present and support the Judicial Branch's Fiscal Year 2024 budget request to the Legislature.

In accordance with law, the Judicial Branch submitted its Fiscal Year 2024 budget request directly to the Legislature on May 30, 2023, and today is the Judiciary's first opportunity to present and support our budget to the body responsible for ensuring that the needs of the judicial branch are met. To assist in

this presentation, I am privileged to have present with me today the Honorable Debra S. Watlington, Presiding Judge of the Superior Court; the Honorable Harold W. L. Willocks, Administrative Judge of the Superior Court; Regina Petersen, the Administrator of Courts; Kevin A. Williams, Sr., Assistant Administrator of Courts; Paulette Rabsatt-Simmonds, Chief Financial Officer; Lawrence Walcott, Jr., Chief Marshal; Daria Scott, Court Services Administrator; and Nissa Bailey, Employee Relations Coordinator on behalf of our Human Capitol Officer, Koya Ottley, who is unable to attend.

Appearing remotely will be Paul Gimenez, Esq., General Counsel; Veronica Handy Esq., Clerk of the Supreme Court; Tamara Charles, Clerk of the Superior Court; Roxanne Serrano, Superior Court Chief Deputy Clerk for the St. Croix District; Tanisha Bailey-Roka Esq., Chief Disciplinary Counsel; Janelle Browne, Director of Bar Admissions; Kimlyn Etienne, Comptroller and Natalie Thomas-Pickering, Procurement Director.

FY 2024 BUDGET REQUEST

For Fiscal Year 2024, the Judicial Branch of the Virgin Islands requests an appropriation of \$52,621,081. Of this amount, \$49,571,061 is to fund the regular operations of the Judicial Branch, while \$3,050,020 is earmarked to fund two important additions: the start-up costs for an Office of Conflict Counsel, and the

costs associated with the expansion of the Supreme Court from three justices to five justices. And as has been customary, we also request a separate appropriation of \$131,151 to the Judicial Council, the entity which partially funds the staffing of the District Court law libraries which remain open and available to the public and the Virgin Islands Bar.

| Budget Summary | Amount | % |
|------------------------------------|----------------------|------------|
| Personnel Services | \$ 24,817,244 | 47 |
| Fring Benefits | \$ 10,952,546 | 21 |
| Total Personnel Services | \$ 35,769,790 | 68 |
| Other Personnel Services | \$ 1,478,500 | 3 |
| Capital Outlays | \$ 4,209,975 | 8 |
| Supplies | \$ 707,000 | 1 |
| Utility Services & Communication | \$ 2,348,212 | 4 |
| Other Services & Charges | \$ 5,057,584 | 10 |
| Expansion Services and Charges | \$ 3,050,020 | 6 |
| Total FY 204 Budget Request | \$ 52,621,081 | 100 |

I will begin with our largest request, the \$49,571,061 needed to fund our regular operations. This amount represents \$24,817,244 for salaries and \$10,952,546 for fringe benefits; \$4,293,624 for other services and charges; \$4,209,975 for capital expenditures; \$2,348,212 for utilities; and \$707,000 for supplies. Our salary and fringe benefits requests include funding for 308 filled positions, with 129 vacancies pro-rated at 50%, as well as a 5% salary increase for regular employees and a salary increase for judicial officers to keep the salary of a Superior Court judge on par with salary of a magistrate judge of the federal District Court.

Our request for a \$49,571,061 appropriation for Fiscal Year 2024 to fund court operations is approximately \$6,000,000 greater than our \$43,104,318 request for Fiscal Year 2023 and nearly \$9,000,000 greater than our actual Fiscal Year 2023 appropriation of \$40,500,000. The Judicial Branch does not make this request lightly, and arrived at this figure through a lengthy and deliberative process that considered and analyzed all areas of our operations. For the reasons I will outline, it is simply not possible for the Judicial Branch to perform the services expected of it at our current funding level. Any appropriation below the requested amount means that the Judicial Branch will need to triage and sacrifice some services in favor of others.

With that in mind, I will explain how the financial needs of the Judicial Branch have changed. The largest component of our budget is the costs associated with personnel, both salaries and fringe benefits. While when we think of courts we typically first think of judges, there are some 300 Virgin Islanders employed by the Judicial Branch without whom the courts cannot fulfill their constitutional and statutory functions. Court clerks process and maintain documents filed with the court and issued by the court, collect fines and fees, participate in court hearings and assist the public. Marshals and security officers ensure the protection of both judges and the public and serve process so that cases may be heard without threats of violence or intimidation. Information technology professionals support and

maintain our electronic filing and case management systems, as well as courtroom technology. Various administrators and specialists schedule trials and manage the business side of the courts, such as human resources, procurement and accounting.

In this year's State of the Judiciary, I outlined an "all-hands-on-deck" approach to case management and emphasized that this truly means all hands on deck: as the duty to move a case forward does not rest exclusively with the judge assigned to the case, it requires the support and cooperation of all court staff as well as external justice system partners and parties.

As this body is aware, the Judicial Branch has experienced significant employee turnover in recent years, and I am disappointed to report that the problem has gotten worse rather than better. In the first nine months of Fiscal Year 2022, the Judicial Branch has experienced a staggering 52 separations. This includes 18 retirements, bringing the total number of retirements over the past five years to an astounding 59 – nearly 20% of our workforce excluding vacancies. Unfortunately, it is often difficult to fill the vacancies created by these very experienced retired workers. We struggle to attract qualified new employees for the same reason we fail to retain incumbent employees: uncompetitive compensation for difficult work.

The Judicial Branch has certainly made some strides in this area. We were able to increase salaries for our most critical positions. For example, the entry level salary for our marshals was adjusted to be comparable to police officer starting

salaries. Judicial law clerks, secretaries, court reporters, and court clerks also received salary increases to promote retention and recruitment. This year, the Judicial Branch will continue these efforts by engaging in a complete market compensation study, facilitated by the National Center for State Courts, to address salary disparities and take other steps to improve retention, recruitment, and morale. We hope to begin discussions more thoroughly with the Legislature upon completion of the compensation and classification study. In the interim, we continue to include across the board increases for the regular employees of the branch in our budget.

Perhaps the most challenging vacancies for the Judicial Branch to fill are court reporter positions. Court reporters serve one of the most critical roles in judicial proceedings—making an exact verbatim record of what occurred—and historically, if a court reporter is not present to record and transcribe a hearing, the hearing does not occur, even if the judge, attorneys, witnesses, and other participants are all available. The Virgin Islands has not been immune from the stenographic court reporter shortage that is affecting the entire United States. This shortage has been the product of the combination of many retirements occurring while far fewer students are choosing to enroll in stenography school, to the point where it is common for court reporter positions to be advertised with annual salaries in the range of \$100,000 yet still not be filled with qualified individuals. Already, the shortage is

having dire consequences as scheduling a case ready for trial can hinge on the availability of a court reporter, or multiple court reporters in the case of longer trials.

While the Judicial Branch continues to actively recruit and retain stenographic court reporters, it has also turned to other solutions to alleviate the effects of this crisis. In late 2020, with the assistance of CARES Act funds, the Judiciary upgraded all courtrooms and jury assembly rooms with modern audio and video multichannel digital technology to accurately capture and record the entire court proceeding, permitting us to not only safely navigate the pandemic, but to properly position the branch to navigate the current court reporter shortage. With these new capabilities, the Judicial Branch contracted with a digital court reporting institution accredited by the American Association of Electronic Reporters and Transcribers (AAERT) to train and produce certified digital court reporters—a new type of court reporter that does not make a separate stenographic record, but instead one that utilizes the recording by our courtroom technology to annotate and thereafter transcribe a recorded proceeding upon request. We have made this program available to all current and future staff, with the Judicial Branch paying the employees' tuition and providing them with the necessary equipment. I am pleased to report that a total of 12 employees are registered in this program, 2 of whom have successfully completed the program and are preparing for the final certification exam. Upon completing certification, the Judicial Branch will utilize these digital court reporters to augment

staff in the court reporting division, which will allow the Superior Court to hold multiple hearings—even trials—simultaneously and greatly reduce the likelihood of a hearing or trial needing to be cancelled or continued due to the unavailability of a court reporter. Included in the fiscal year 2024 Budget Request are 10 digital court reporting positions, 5 in each district. The Judicial Branch will shortly adopt new court rules to govern and facilitate the use of the electronic court record.

Recovery/Capital Projects

The cost associated with maintaining Judicial Branch facilities is another area where our expenses have grown. The Territory continues to manage recovery from Hurricanes Irma and Maria, and the Judiciary is no exception to this daunting task. As I stated last year, it took us nearly four years to complete repairs to the roof of the Alexander A. Farrelly Justice Center on St. Thomas. While we have since completed repairs to all courtrooms in the facility and repaired storm damaged hallways, other interior repair projects remain ongoing. One project of public interest is the reinstatement of the Law Library in the Alexander A. Farrelly Justice Center. With Phase I of the Library mold remediation project completed, we recently awarded the bid for the reconstruction/repair of walls and ceiling in this and other areas of the building, which needed to be removed as contaminated material during the remediation process. We anticipate those repairs to be completed in August, and following the sanitization of otherwise undamaged library resources, we are

strategically working to bring the Law Library at Alexander A. Farrelly Justice Center back online soon thereafter.

In fact, overall, there has been a steady and gradual transformation of the Alexander A. Farrelly Justice Center courthouse, from the courtroom and hallway repairs/renovations and technology upgrades; to repairs and upgrades to 14 sets of restrooms in the facility with 2 more currently under renovation; to exterior paint and building repairs including the installation of bird spikes on 75% of the courthouse, with a solicitation recently awarded to complete the installation of bird spikes on the remaining nesting areas; as well as much needed landscaping completed earlier this year.

Additionally, the Judiciary recently secured nearly 5,400 square-feet of warehouse space and will be issuing a solicitation for design and build-out of this warehouse space so that the Judiciary can both consolidate its storage needs and relocate and modernize record storage to serve the court for the foreseeable future. Accordingly, the current request includes a new lease for warehouse storage in the amount of \$144,000 per year. With storage consolidation we hope to eliminate the need for commercial storage on St. Thomas in the future and will be looking for similar opportunities on St. Croix.

In the District of St. Croix, we are near final completion of Phase I of the Roof Replacement and Office Expansion project at the R.H. Amphlett Leader Justice

Complex, and as announced in my testimony last year, we have included \$1.5 million in this FY 2024 request in funding for Phase II. As you may be aware from previous reports, Phase I entailed demolishing the courtyard and condemning a drainage system that caused significant water damage in 4 courtrooms on the second floor as well as many office areas on the first floor of the R.H. Amphlett Leader Justice Complex during Hurricane Maria, and erecting a structural steel beam to support a canopy enclosure on the second floor. Thanks to careful space planning and design, and still with courtyard space to spare, we will now be able to reconstitute the Law Library in the St. Croix Courthouse as well. As a reminder, because funding for the St. Croix Annex which was among other things to be designated the Family Court has never been approved, in 2016, the Law Library was converted to become a designated Family Courtroom, so that, with the addition of a 4th general jurisdiction judge in the District of St. Croix, there would also be 4 full jury courtrooms for parity in operations between the districts. Although the courts have not received funding to construct new buildings or additions for a growing system, we continue to maximize every square foot of the buildings we have, in order to address our growing expansion needs. The completion of Phase I construction also provides additional office space that will temporarily be used to house each impacted judge as the staged Phase II Roof Replacement begins.

In addition to the Roof and Office Expansion Project at the RH Amphlett

Leader Justice Complex, 6 sets of restroom facilities have also been fully renovated and restored to service as we continue to improve our facilities for staff and the public we serve. The Judiciary also recently awarded a contract for the replacement of the hurricane damaged roof at the Raymond L. Finch Supreme Court Building in Frederiksted. Work scheduled to begin the first week of July was postponed due to shipping delays and will now begin on July 24, 2023.

The Judicial Branch continues to fight a battle with failing 30-year-old infrastructures in both St. Croix and St. Thomas. I testified at last year’s budget hearing that the R.H. Amphlett Leader Complex had experienced catastrophic failures of two chill water units which were replaced under exigency conditions at a cost of \$293,000. Other HVAC components are at end of life, and necessary plumbing upgrades from compromised copper piping must be replaced as those lines fail. The critical infrastructure repairs within our budget request are outlined in the table below.

| Building Improvements Description | Amount |
|---|---------------------|
| A/C Units Thermostats And Dampers -stt | \$ 500,000 |
| A/C Air Handlers | \$ 400,000 |
| Library Restoration | \$ 90,000 |
| AFJ LED Lighting Project | \$ 30,000 |
| Bayside Clean up | \$ 50,000 |
| AFJ Clerk's Office & OVIM Tiling project | \$ 50,000 |
| Storage Building out at P & P | \$ 400,000 |
| Security Acces Card System Expansion -RHA STX | \$ 90,000 |
| STX Door and Door f\Frame rehab project | \$ 180,000 |
| Phase II funding request Kingshill | \$ 1,500,000 |
| Total Infrastructure Improvements | \$ 3,290,000 |

As the statistical data in the current and prior Annual Reports illustrate, despite substantial disruptions caused by the twin disasters of Hurricanes Irma and Maria, followed closely thereafter by the COVID-19 pandemic and ongoing recovery projects in occupied facilities, the courts of the Virgin Islands have made tremendous strides in resolving cases over the last several years. Since the resumption of jury trials in November 2021, 41 jury trials have been convened: 22 in the District of St. Thomas-St. John, and 19 in the District of St. Croix. Because full caseload statistics are provided in the 2022 Annual Report of the Judiciary & Court System, I will only briefly report on case trends as of June 30th of the current fiscal year. In addition to the number of jury trials conducted since the resumption of normal operations, the Superior Court has disposed of 315 criminal jury cases, for a disposition rate of over 100% when compared to the 269 new criminal cases filed since October 1st. Additionally, 90 civil jury matters have been disposed for a clearance rate of over 99% when compared to the 91 new civil jury cases that have been filed since October 1st. With regard to probate cases, 196 new Probate matters have been filed as of June 30th. and 210 cases have been disposed to date for a case clearance rate of over 100%.

There are certain positions within the Judicial Branch that cannot be filled at will from the general population. The Judicial Branch cannot simply hire more judges as under current law, a new judge may only be appointed by the Governor

with the advice and consent of the Legislature. However, to reduce current backlogs, and in consultation with the Presiding Judge of the Superior Court, I will exercise my authority under title 4, sections 24(b) and 74a of the Virgin Islands Code to recall as many former and retired judges to temporary service as Senior Sitting Judges of the Superior Court as the Judicial Branch budget can sustain. This is a key component of a multi-faceted “all-hands-on-deck” approach to case backlog reduction.

Although recalling former and retired judges for temporary service is certainly beneficial, the number of former and retired judges who are both eligible and willing to accept such appointments is limited. Appointing additional full-time judges is a costly endeavor that requires funding not just for the judge’s salary, but also the hiring of sufficient support staff and construction of additional courtrooms and other suitable facilities. As we continue to examine our internal operation and structure, one suggestion made to address the shortage and critical use of judges has been to convert the current Magistrate Judges to full Superior Court judges. Also, the Judicial Branch is limited to hiring marshals and certain probation officers to those persons who are POST certified law enforcement officers (LEOs). To address the growing shortage of POST certified marshals another suggestion is to expand our Probation and Marshals Offices to include non-Law Enforcement Officer positions to assist with the monitoring of pretrial release defendants, including those on

electronic monitoring, as well as non-LEO bailiffs to handle courtroom duties instead of marshals.

Expansion Requests

I now turn to our request for a special appropriation of \$3,050,020 to fund two important changes in the Judicial Branch: the start-up costs for an Office of Conflict Counsel (\$1,6238,803), and the costs associated with the expansion of the Supreme Court from three justices to five justices (\$1,421,217). I will begin with the Office of Conflict Counsel.

A significant challenge facing our justice system relates to the Government's obligation to provide effective assistance of counsel to indigent defendants as required by the 1963 decision of the Supreme Court of the United States, in *Gideon v. Wainright*, and guaranteed by the Sixth Amendment to the United States Constitution. While the Legislature created the Office of the Territorial Public Defender to represent indigent criminal defendants in the courts of the Virgin Islands, that office cannot do so in cases of an ethical conflict. The courts are therefore statutorily required to appoint members from the private Bar to represent those indigent defendants. However, the involuntary appointment system has been flawed to the extent that it neither considers the criminal law experience of the attorney subject to appointment nor their desire to be appointed to criminal cases.

In 2017 the Judiciary reformed the process of indigent appointments by establishing private attorney panels consisting of members of the Bar who volunteered to accept such appointments at a fixed hourly rate. But even this system has proven imperfect, in that the number of indigent criminal defendants who cannot be represented by the Office of the Territorial Public Defender far exceeds the capacity of these volunteer attorneys, all of whom remain engaged in the full-time private practice of law.

As I have previously stated to this body, the establishment of an independent second public defender's office, known in some jurisdictions as the Alternative Public Defender or the Conflict Attorney's Office is a solution to this problem used by many other jurisdictions. In this regard, in December, and in addition to establishing a Standing Committee on Indigent Appointments, the Supreme Court promulgated amendments to Rule 210 to provide for the establishment of an Office of Conflict Counsel as an independent agency within the Judicial Branch operating under the supervision of the Standing Committee on Indigent Appointments.

However, while the Judicial Branch has taken the initiative to establish the Office of Conflict Counsel by court rule, the obligation to provide indigent criminal defendants with court-appointed counsel in a manner that comports with *Gideon* ultimately belongs to the Legislature. As such, by letter dated June 27, 2023, and on

behalf of the Committee on Indigent Appointments, I transmitted draft legislation to the Senate President to establish the Office of Conflict Counsel. And for that purpose, the Judiciary has included \$1,628,803 in its budget request to fund the operations of the Office of Conflict Counsel. The funding will staff offices in each district in accordance with the personnel schedule included in the request. The estimated personnel cost for the Office of Conflict Counsel is \$1.3 million, and \$294,000 for startup operations.

Our budget request also includes \$1,421,217 for the expansion of the Supreme Court from three justices to five justices. This expansion was authorized by Act No. 7888 in 2016, but no nominations have ever been made for the positions. In recent requests, we have omitted requesting an appropriation for the expansion in the absence of an indication that the Governor intends to submit nominees for one or both new positions. However, the three current Justices of the Supreme Court are also the only Justices to have served on the Supreme Court, having all been initially confirmed to ten-year terms in 2006 and then reappointed to second ten-year terms in 2016. While the continuity of the membership of the Supreme Court has certainly been highly beneficial, the absence of staggered terms means that there is a very real prospect that there could be 100% turnover in the composition of the Supreme Court by 2026 or earlier if any of the three incumbent Justices retire or do not seek reappointment. In order to provide some continuity, I urge the Legislature to

appropriate the funds necessary to implement the expansion of the Supreme Court authorized by Act No. 7888 and urge the Governor to nominate qualified individuals for those positions within the next year.

Finally, as a matter of personal privilege, I wish to recognize our new Presiding Judge, the Honorable Debra S. Watlington, as well two new jurists, the Honorable Carol Thomas-Jacobs as a judge of the Superior Court in the St. Thomas-St. John district and the Honorable Yvette Ross-Edwards, as a judge of the Superior Court in the St. Croix district, both of whom were recently confirmed by the Legislature. I congratulate Presiding Judge Watlington on her new role as Presiding Judge, and the immediate past Presiding Judge, the Honorable Harold W. L. Willocks, on his renomination and confirmation to another 6-year term on the bench and for agreeing to serve as the Administrative Judge. I would like to take this opportunity to publicly thank the Honorable Renee Gumbs-Carty and the Honorable Jomo Meade, not only for their past judicial service, but for continued service as Senior Sitting Judges to complete cases in progress and to assist the judiciary in reducing existing case backlogs.

On a somber note, and on behalf of the entire judiciary, I wish to express sincere condolences to the family, friends and colleagues of fallen Virgin Islands Police Detective Delbert Phipps. He was a member of our Justice system and when a member is lost under such tragic circumstances, that loss reverberates across the

entire justice system and our community.

In closing, I once again present to this body our budget request of \$52,621,081 which includes \$1,421,217 for the expansion of the Supreme Court from 3 Justices to 5 Justices, and \$1,628,803 for the Office of Conflict Counsel, as well as the request of \$131,150 to fund the salaries of the two Law Librarians under an appropriation to the Judicial Council. I request that this Committee and the full Legislature give the Judicial Branch's budget request your thoughtful consideration and approval.

Thank you for providing the Judiciary with the opportunity to testify in support of our budget request. I once again would like to take this opportunity to thank all our dedicated, hard-working and exceptional employees who, against all odds, continue to perform above and beyond the call of duty in their service to the Judicial Branch and the people of the Virgin Islands.

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