

BILL NO. 35-0336

Thirty-Fifth Legislature of the Virgin Islands

September 18, 2024

An Act amending title 5 Virgin Islands Code, subtitle 3, part I by establishing the Office of Conflict Counsel, granting personal immunity to individuals providing legal representation or services to indigent defendants, and making an appropriation to establish the Office of Conflict Counsel

PROPOSED BY: Senator Novelle E. Francis, Jr.

Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. Title 5 Virgin Islands Code, subtitle 3, part I is amended in the following instances:

(a) In chapter 301, by adding section 3503a. that reads:

“§ 3503a. Immunity from personal liability

All attorneys and other personnel employed by the Office of the Territorial Public Defender and the Office of Conflict Counsel and any contracted attorneys, investigators, or firms, as well as all private counsel appointed pursuant to sections 3503 or 3535 are immune from personal liability for acts performed in the course of their official duties, including suits for legal malpractice or professional negligence. This immunity may not be construed to preclude the Supreme Court of the Virgin Islands, the Board on Professional Responsibility, the Office of Disciplinary Counsel, the Virgin Islands Bar Association, or other licensing entities from adjudicating a grievance or other claim of ethical misconduct and, if warranted, imposing appropriate discipline.”

1 (b) In chapter 302, subchapter I, section 3524:

2 (1) in the section title, insert “; conflict of interest” after “Public Defender”;

3 (2) designate the existing language as subsection (a); and

4 (3) add subsections (b) through (e) to read:

5 “(b) The Public Defender is permitted to withdraw from a case upon a
6 finding by a court that a conflict of interest exists.

7 (c) To request withdrawal from a case due to a conflict of interest, the Public
8 Defender shall file a motion describing with specificity the nature of the conflict of
9 interest. If the Public Defender determines that ethical obligations prevent a public
10 disclosure of the nature of the conflict of interest, the Public Defender shall cite any
11 applicable legal authority for that determination, and that portion of the motion
12 must be sealed. An order granting a motion to withdraw based on a sealed motion
13 to withdraw may be appealed.

14 (d) Upon a court’s determination that a conflict of interest exists, the court
15 shall appoint the Office of Conflict Counsel.

16 (e) For purposes of this section, the existence of a conflict of interest is
17 governed by the Virgin Islands Rules of Professional Conduct.

18 (c) Add chapter 302a. that reads:

19 **“Chapter 302a. Office of Conflict Counsel**

20 **§ 3531. Office of Conflict Counsel; established**

21 (a) There is established, the Office of Conflict Counsel (“Office”). The Office is
22 established within the judicial branch of the Government of the Virgin Islands for the purpose
23 of representing indigent criminal defendants in cases where the Office of the Territorial Public
24 Defender has a conflict of interest. The Office is under the supervision of the Territorial Public
25 Defender Administration Board (“Board”).

26 (b) For purposes of this chapter, the existence of a conflict of interest is governed by

1 the Virgin Islands Rules of Professional Conduct.

2 **§ 3532. Staff; qualifications**

3 (a) The Board shall hire a Chief Conflict Counsel who is licensed to practice law in the
4 Virgin Islands. The Chief Conflict Counsel is responsible for administering the Office. The
5 Office must be staffed with attorneys, licensed to practice law in the Virgin Islands, and
6 secretarial, investigative, clerical, and other personnel as necessary to discharge the duties of
7 the Office.

8 The Board shall determine the compensation of all employees of the Office. The
9 Board, upon recommendation of the Chief Conflict Counsel, shall hire and terminate all
10 employees. If the Board lacks sufficient members to constitute a quorum, the
11 Administrator of Courts shall hire and terminate all employees, including the Chief
12 Conflict Counsel.

13 (b) The general personnel policies applicable to the judicial branch of the Virgin
14 Islands is applicable to the Office, except when the Board elects to adopt different policies.

15 **§ 3533. Contracts with attorneys and investigators**

16 (a) The Office may contract with private attorneys or law firms to provide
17 representation to clients to which the Office has been appointed, and with investigators or
18 investigative firms for the provision of investigative services.

19 (b) The Office shall only contract with attorneys licensed to practice law in the Virgin
20 Islands and all investigators, law firms, and investigative firms must be licensed to conduct
21 business in the Virgin Islands. All contracts must be in writing, must specify the manner of
22 compensation, the number or type of cases to be undertaken, and limitations, if any, on the
23 services to be provided. The compensation paid to private attorneys contracted by the Office
24 must be the same as provided to court-appointed counsel as provided for under 5 V.I.C. § 3503

25 (b).

26 **§ 3534. Duties**

1 (a) The Office shall provide legal representation only in cases where a court has
2 determined that the Office of the Territorial Public Defender has a conflict.

3 (b) The Office shall represent clients consistent with the requirements of 5 V.I.C. §
4 3524 (a).

5 (c) The Chief Conflict Counsel and attorneys employed by the Office may not engage
6 in the practice of law other than for the Office.

7 **§ 3535. Appointment of Private Counsel**

8 (a) If a conflict of interest exists, the Office may request withdrawal from the case in
9 accordance with the procedure and limitations set forth in 5 V.I.C. § 3524 (c).

10 (b) If the Office of the Territorial Public Defender and the Office of Conflict Counsel
11 have both been granted permission to withdraw from a case due to a conflict of interest, the
12 court shall appoint other counsel to represent the defendant at every stage of the proceedings
13 and may appoint counsel from a panel of private attorneys in accordance with 5 V.I.C. § 3503
14 (a).

15 **§ 3536. Administration; accounts and budget**

16 (a) The Judicial Branch Administrative Office shall establish one or more separate
17 accounts for the deposit of funds allotted to the Office of Conflict Counsel. The funds shall be
18 expended exclusively for the operating expenses of the Office, as authorized by the Board. The
19 funds shall remain available until expended.

20 (b) Not later than March 30 of each year, the Office of Conflict Counsel shall submit
21 to the Chief Justice and the Administrator of Courts, the Office's proposed budget for the
22 following fiscal year, which must be included in the proposed annual budget for the judicial
23 branch of the Virgin Islands.”

24 **SECTION 2.** The sum of \$500,000 is appropriated in the fiscal year ending September
25 30, 2024, from the General Fund of the Treasury of the Government of the Virgin Islands to

1 the judicial branch of the Government of the Virgin Islands, to establish the Office of Conflict
2 Counsel.

3 **BILL SUMMARY**

4 This bill amends title 5 Virgin Islands Code, subtitle 3, part I, chapter 301 by granting
5 personal immunity to individuals providing legal representation or services to indigent
6 defendants. This bill also establishes the Office of Conflict Counsel (“Office”) within the
7 judicial branch of the Government of the Virgin Islands for the purpose of representing indigent
8 criminal defendants in cases where the Office of the Territorial Public Defender has a conflict
9 of interest. The Office is under the supervision of the Territorial Public Defender
10 Administration Board (“Board”) who is authorized, upon recommendation of the Chief Conflict
11 Counsel, to hire all employees. The Chief Conflict Counsel is responsible for administering
12 the Office. The Office is authorized to contract with private attorneys or law firms to provide
13 representation to clients to which the Office has been appointed, and with investigators or
14 investigative firms for the provision of investigative services. The bill further requires the
15 Judicial Branch Administrative Office to establish one or more separate accounts for the deposit
16 of funds allotted to the Office of Conflict Counsel and makes an appropriation of \$500,000
17 from the General Fund of the Treasury of the Government of the Virgin Islands to the judicial
18 branch of the Government of the Virgin Islands, to establish the Office of Conflict Counsel.

19 **BR23-0651/August 21, 2024/GC**