

TESTIMONY OF
ALISHA UDHWANI, CHAIR
V.I. SUPREME COURT'S STANDING COMMITTEE ON INDIGENT
APPOINTMENTS

ON

BILL NO. 35-0336, 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
BEFORE
THE THIRTY-FIFTH LEGISLATURE
COMMITTEE ON RULES AND THE JUDICIARY

ON

DECEMBER 12, 2024

Good Afternoon, Honorable Chair Capehart, Honorable Members of the Committee on Rules and the Judiciary; Honorable Members of the 35th Legislature, Legislative staff, and of course good afternoon to everyone staying informed by watching this legislative hearing at home.

My name is Alisha Udhwani, and I am an Associate Attorney at Dudley Newman Feuerzeig. I am here today in my capacity as Chair of the Supreme Court's Standing Committee on Indigent Appointments to testify in strong support of Bill No. 35-0336, which seeks to establish the Office of Conflict Counsel.

I understand that Attorney Gimenez, General Counsel of the Judiciary of the Virgin Islands, is also here to testify on this important bill. To avoid repeating the information that has been or will be thoughtfully presented, I will focus my testimony on why we need the Office of Conflict Counsel here in the Virgin Islands and mention a few suggested amendments to the Bill.

By way of background, I became involved in the Standing Committee on Indigent Appointments in 2022 while serving as President of the Virgin Islands Bar Association. I was elected Chair of the committee during our first meeting and have served in that capacity ever since. At that inaugural meeting, Chief Justice Hodge emphasized the critical need for an Office of Conflict Counsel, highlighting the success of similar initiatives in states and territories such as Colorado and Guam.

These examples demonstrate the potential for transformative improvements in the quality and efficiency of indigent defense, which this bill aims to achieve here in the Virgin Islands.

This legislation is not just a procedural adjustment—it is a necessary step toward ensuring the integrity and fairness of our criminal justice system.

So, Why Do We Need the Office of Conflict Counsel?

As you are aware, the Sixth Amendment to the United States Constitution guarantees the right to effective legal representation for every individual accused of a crime, regardless of their ability to pay. In practice, however, this right is jeopardized when private attorneys, often with little or no experience in criminal law, are appointed to cases due to conflicts within The Virgin Islands Office of the Public Defender.

While private attorneys play a critical role in our legal system, many who are appointed to criminal cases lack the specialized training and practical experience required to navigate the complexities of criminal defense.

To illustrate, imagine being told that a podiatrist will be performing your heart surgery. While both podiatrists and cardiothoracic surgeons have completed medical school, their training, expertise, and day-to-day practices are entirely different. A podiatrist may be an exceptional physician in their field, particularly in treating foot-related issues, but they are not equipped to handle the intricacies of heart surgery. Similarly, an attorney who excels in commercial transactions or family law may lack the requisite skills and knowledge to competently handle a criminal case. The stakes, in both examples, are far too high to take such risks.

The consequences of appointing attorneys without criminal law expertise can be dire:

- Criminal defense requires knowledge of constitutional law, criminal statutes, procedural rules, and sentencing guidelines. A lack of familiarity can lead to wrongful convictions, excessive sentences, or violations of due process.
- Inexperienced attorneys often need extra time to familiarize themselves with criminal law, delaying case resolution, overburdening courts, and prolonging pretrial detention.
- Additionally, an attorney who has no experience in criminal law will need to place a significant amount of time towards gaining the skills and knowledge they would need to adequately represent their client. Therefore, there is an increase of cost to the Judiciary.

What Are The Role and Benefits of the Office of Conflict Counsel?

The Office of Conflict Counsel would serve as a dedicated, experienced alternative to the Public Defender's Office when conflicts arise. Its establishment would provide several key benefits:

1. Conflict Counsel attorneys would be specifically trained in criminal defense, ensuring high-quality representation and reducing the risk of legal errors.
2. A structured office with experienced attorneys would reduce delays in case preparation and court proceedings, allowing for more timely resolutions.

3. By eliminating the reliance on private attorneys for conflict cases, the Office of Conflict Counsel would streamline costs and improve budget predictability for indigent defense services.
4. This initiative reinforces our commitment to a fair justice system, ensuring that every accused individual has access to competent legal representation.

What Are The Broader Implications of This Legislation.

Establishing the Office of Conflict Counsel is not just about improving legal representation—it is about safeguarding the principles of justice and equality. When individuals face criminal charges, their liberty is at stake. They deserve representation by skilled attorneys who have specialized expertise and are equipped to advocate vigorously on their behalf.

While the Judicial Branch has worked diligently to establish the Office of Conflict Counsel, the grant funding it expires this month. Like the Office of the Territorial Public Defender, the Office of Conflict Counsel is vital to our community and must operate independently of the Judicial Branch. It is critical that you vote to secure continued funding for the Office of Conflict Counsel.

By enacting Bill No. 35-0336, this Legislature has the opportunity to address a longstanding gap in our justice system, alleviate the strain on the courts, and affirm the Virgin Islands' commitment to upholding constitutional rights for all residents.

I urge you to support this critical legislation. Justice demands it, and our community deserves it.

Amendments:

As previously mentioned, the Standing Committee on Indigent Appointments has a few suggested amendments to Bill No. 35-0336, which I am submitting as part of this testimony, marked as Exhibit A. Our proposed changes are highlighted in red. We believe these amendments serve to provide greater clarity and strengthen the bill.

1. First, on page 2 Section 3531(a) We propose ending subsection (a) with the following language:

The Office is under the supervision of the Territorial Public Defender Administration Board (“Board”) for administrative purposes only. The operations of the offices shall remain separate.

This ensures clear separation of the Office's operations while recognizing the Board's role in administrative oversight.

2. Second, on page 3 Section 3532(a), we suggest adding the following:

To ensure the stability and continuity of the Office of Conflict Counsel, it is hereby provided that no employee of the Office, hired prior to December of 2024 shall be subject to dismissal or alteration of compensation by the Board except for cause.

This provision aims to uphold principles of fairness and protects the integrity of the Office to ensure that its essential work continues without interruption.

3. Lastly, page 4 Section 3534, we propose the following revision to subsection (a):

The Office shall provide legal representation only in cases where a court has determined that the Office of the Territorial Public Defender or other appointed counsel has a conflict.

This change clarifies the scope of the Office's responsibilities to include situations where other appointed counsel has a conflict.

Thank you:

I would like to take a moment to thank and recognize the members of the Standing Committee on Indigent Appointments, who have worked so diligently over the past few years to get this office up and running. Our committee is made up of Chief Justice Rhys Hodge, Judge Debra Watlington, Judge Ernest Morris, who is the Committee's Secretary, Attorney Martial Webster, Judge Adam Christian, Chief Julie Todman, Attorney Shelby Gaddy King, Attorney Veronica Handy, Clerk of Court Tamara Charles, and last but definitely not least, Administrator of Courts Regina Petersen, whose tireless dedication and attention to every intricate detail have been instrumental in getting the Office of Conflict Counsel up and running.

I would also like to extend my gratitude to Senator Francis for sponsoring this very important Bill.

It is truly an honor to be here today to testify in support of this Bill. Thank you for your time and attention. I am happy to answer any questions you may have.