

PRESENTATION OF ATTORNEY GENERAL NOMINEE
GORDON C. RHEA
THIRTY-FIFTH LEGISLATURE OF THE VIRGIN ISLANDS
COMMITTEE ON RULES AND JUDICIARY
MAY 24, 2024

Good morning, Madam Chair Capehart, Committee on Rules and Judiciary members, legislative staff, and those of you in the viewing and listening audience. My name is Ian S.A. Clement, and I am the Deputy Attorney General of St. Thomas, St. John, and Water Island District. On behalf of Attorney General Nominee Gordon Rhea, I am pleased to provide a few remarks regarding proposed Bill No. 35-0121.

Bill No. 35-0121, as proposed by Senators Diane T. Capehart and Novelle E. Francis, is a comprehensive piece of legislation. It seeks to amend Title 4 of the Virgin Islands Code, Chapter 29, section 482, and Title 5 of the V.I.C., Chapter 61, section 660, to increase jury and witness fees and allowances. The Department of Justice has thoroughly reviewed this bill and is ready to provide detailed comments.

Currently, under 4 V.I.C. § 482, jurors in the Virgin Islands are entitled to compensation as provided for in sections 1864 and 1871 of Title 28 of the United States Code. The federal statute provides jurors an attendance fee of \$50 per day. While there is no legal requirement to pay jurors for their service, every state compensates residents serving on civil and criminal juries. This compensation varies from \$5 to \$50 per day, with some states also providing mileage reimbursement to help cover the costs of traveling for jury duty.

If Bill No. 35-0121 is approved, the existing language in 4 V.I.C. § 482 would be replaced. The new provisions would allow jurors impaneled for trial to receive \$80 or \$40 per half day of service. Jurors who participated in the jury selection process but were not selected to sit on a jury would be entitled to \$20 per day, or \$10

per half day, for their service. Bill No. 35-0121 also provides “reasonable compensation for travel, parking, and a subsistence allowance covering meals and lodging as determined by the court.” It's important to note that jurors employed by the local or federal government will not be eligible for these payments.

Additionally, 5 V.I.C. § 660 currently allows witnesses to be compensated at a rate of \$4 per day plus an additional \$8 per day for “subsistence.”¹ As stated in Bill No. 35-0121, neither 5 V.I.C. § 660 nor the compensation rate for witnesses has been updated since 1957. If amended, 5 V.I.C. § 660 would allow a witness attending court or appearing before an administrative judge to receive \$80 for each day's attendance and an additional allowance of “\$100 per day for subsistence including the time necessarily occupied in going to and returning from the place of attendance and for incidental inter-island travel costs.”

As you evaluate and vote on Bill No. 35-0121, the following should be considered. First, while the language in the newly created 4 V.I.C. § 482(a) would increase the amount jurors are compensated for their service, it does not identify the party responsible for making these payments or a funding source for the increased fees. Bill No. 35-0121 should clearly state who will make these increased payments and how they will be funded.

Second, the language in proposed 4 V.I.C. § 482(b) allows for “reasonable compensation for travel, parking, and a subsistence allowance covering meals and lodging as determined by the court” but, once again, does not provide a funding source for these expenses. While one can assume that the courts will be responsible for paying these fees, Bill No. 35-0121 does not make this clear. Again, this bill

¹ 5 V.I.C. § 660

should clearly state who will make these increased payments and how they will be funded.

Third, language in 4 V.I.C. § 482(c) and 5 V.I.C. § 660 makes federal and Government of the Virgin Islands employees ineligible from receiving benefits as a juror or a witness. Since the territory does not regulate federal employees, the reference to federal employees should be reconsidered. The Department of Justice is unclear about the legal basis for denying payments to federal employees. Additionally, 3 V.I.C. § 586 provides leave for jury service for GVI employees “without loss of pay or deduction from annual leave for the time required for jury service in the Superior Court of the District Court of the Virgin Islands.”

Fourth, while the second sentence of 5 V.I.C. § 660 excludes salaried GVI and federal employees, the first sentence does not. As presented, any witness attending court in the Virgin Islands could be eligible for witness pay, regardless of their status as a government employee. But the practice is a GVI employee who testifies for the government as a lay witness is only entitled to their normal salary. For consistency, I would consider preventing GVI employees, whether salaried or not, from receiving witness compensation when testifying on behalf of the government and within the scope of their employment. Additionally, this section does not contemplate when a government employee acts as an expert witness or when a retiree is called as a witness.

Finally, the second sentence in 5 V.I.C. § 660 provides “an additional allowance of \$100 per day for subsistence including the time necessarily occupied in going to and returning from the place of attendance and for incidental inter-island travel costs.” Does this Legislature intend for this \$100 to be in addition to the reimbursement for “necessary and reasonable expenses of travel” to and from a

witness's place of residence already outlined in the first sentence? As proposed, some witnesses may be eligible to receive a daily fee of \$180 or more.

The decision to increase juror and witness fees and allowances is a policy decision, not a legal one; however, the Department of Justice supports Bill No. 35-0121 in principle. By increasing the compensation rate for jurors, this Legislature can help close the financial hardship jury duty creates for some citizens. The Department of Justice is also hopeful that increasing the fees paid to jurors will increase and diversify the jury pool.

With that, I want to thank the Committee for allowing the Department of Justice to testify on Bill No. 35-0121. This concludes my formal remarks. I stand ready to respond to any questions this body may have.