



Supreme Court Of The Virgin Islands

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The Honorable Carla J. Joseph
Chair, Committee on Rules and Judiciary
Thirty-Sixth Legislature of the Virgin Islands
Capitol Building
St. Thomas, U.S.V.I. 00804

Dear Senator Joseph:

Thank you for providing the Judicial Branch of the Virgin Islands with the opportunity to review and comment on Bill No. 36-0277, which would enact a comprehensive probate code for the Territory. Pursuant to Rule 213.3.2 of the Virgin Islands Code of Judicial Conduct, judicial officers may not voluntarily appear before a legislative body to testify on a proposed bill unless it concerns the administration of justice. As such, neither I nor any other judicial officer may testify in support or opposition to the substantive aspects of Bill No. 36-0277 that represent pure judgments of public policy—such as whether the Virgin Islands should recognize holographic wills, modify the elective share of a surviving spouse, or recognize non-probate transfers. Nevertheless, because certain provisions in Bill No. 36-0277 would impose new duties on court employees, impose unfunded mandates on the courts of the Virgin Islands, and otherwise affect the administration of justice in the Territory, I submit the following comments on behalf of the Judicial Branch.

The Judicial Branch appreciates the efforts of Senator Novelle E. Francis, Jr., the Virgin Islands Bar Association, community organizations, and others who contributed to the development of this legislation and past attempts to modernize our probate laws. Probate reform has been a subject of longstanding concern in the U.S. Virgin Islands; in fact, I touched upon the topic in nearly every State of the Judiciary I delivered in my nearly twenty years as Chief Justice.

The problem with probate reform has never been persuading legislators, judges, governors, attorneys, or the public that it is necessary. Everyone agrees that our existing statutory framework is antiquated and in dire need of modernization. We know that the consequences of prolonged estate administration extend well beyond the courthouse. Many of us personally know fellow Virgin Islanders who have been unable to obtain clear title to inherited property. We have seen the buildings that become vacant and eventually dilapidated when families can never sell nor improve the property even over multiple generations. The Virgin Islands needs a probate system that is fair,

accessible, efficient, and responsive to the needs of our community.

But while it is easy to identify the flaws of the current probate code, it is more difficult to propose an alternative that not only fixes those flaws but does not create new—and potentially bigger—problems of its own. The Virgin Islands already experienced this firsthand with the 2010 adoption of the Uniform Probate Code, whose effective date kept getting extended until eventually nearly all the 300+ page law was repealed or replaced. The delays occurred due to the failure of the Legislature to recognize the significant time and resources it would take for the courts of the Virgin Islands, the Bar, and the public to educate themselves on those comprehensive changes—with repeal ultimately occurring when many stakeholders later realized that not all the reforms were in line with the values of our community.

Of course, Bill No. 36-0277 substantively differs from the 2010 law in several respects. However, it shares an unfortunate similarity: the failure to appreciate the immense time and expense associated with the Judicial Branch implementing the provisions of this 180+ page bill. As presently written, Bill No. 36-0277 vests broad quasi-judicial functions with the Clerk of the Superior Court with no funding for the comprehensive training needed to implement them; would require a near-complete rewrite of the Virgin Islands Rules for Probate and Fiduciary Procedures; and requires that the Judicial Branch implement these unfunded mandates by an unrealistic January 1, 2027 effective date. I will briefly address each concern in turn.

1. Bill No. 36-0277 Converts the Clerk of the Superior Court into a Quasi-Judicial Officer but Provides No Funding for Appropriate Training

Under title 4, section 86 of the Virgin Islands Code, the Presiding Judge appoints the Clerk of the Superior Court. The Clerk is an administrator that manages the non-judicial operations of the Clerk's Office of the Superior Court, including accepting court filings; managing records and dockets; administering oaths; issuing process; and overseeing deputies and other staff that assist with those functions. The duties are ministerial, and the Clerk need not be a lawyer—in fact, neither the current Clerk of the Superior Court nor her predecessor are attorneys.

Bill No. 36-0277 requires the Clerk of the Superior Court to make a wide variety of rulings in probate proceedings. Internal Sections 3-302 and 3-303 require the Clerk to make factual findings and legal determinations on numerous questions such as whether an applicant meets the statutory definition of “interested person;” whether venue is proper; whether the application is timely; whether notice has been given; whether a will was properly executed; and so forth. Internal Sections 3-307 and 3-308 requires the Clerk to appoint a personal representative, which includes making a determination of whether the person seeking appointment has “priority.” Internal Section 3-320, titled “Judgment Recognizing Heirs and Placing them in Possession,”¹ requires the Clerk to “issue a judgment recognizing the devisees, legatees, and/or heirs and placing them in the possession of the property comprising the estate.” These are just examples; Bill No. 36-0277 is replete with provisions that assign the Clerk of the Superior Court responsibility for performing discretionary, non-ministerial functions ordinarily performed of judges.

The Judicial Branch agrees in principle to the assignment of these duties to the Clerk of the Superior Court. There are many benefits to reducing the number of uncontested or low-value

¹ Bill No. 36-0277 has a typographical error on pages 111-12 with multiple sections labeled “3-320” and “3-321.”

matters that must presently go before a judge or a magistrate judge. That would hopefully allow those judicial officers to devote their time to more serious matters. And we know that other jurisdictions that have delegated similar probate authority to their Clerks of Court have reported success.

However, to have the Clerk of the Superior Court perform these functions, the Judicial Branch would need the time and money necessary to train the Clerk of the Superior Court and other Clerk's Office staff to perform them. But those costs are not included in the Judicial Branch's Fiscal Year 2027 appropriation, and Bill No. 36-0277 does not provide a supplemental appropriation to allow the Judicial Branch to bear those costs.

2. Bill No. 36-0277 Will Require Significant Changes to Court Rules and Practices

With the assistance of its Advisory Committee on Rules and on the recommendation of the Virgin Islands Judicial Management Advisory Council, the Supreme Court of the Virgin Islands promulgated the Virgin Islands Rules for Probate and Fiduciary Proceedings in 2019. The rules were drafted with the purpose of streamlining and simplifying the probate process to the greatest extent possible while remaining faithful to the substantive probate laws codified in the Virgin Islands Code. The Supreme Court enacted these rules by excising its inherent and statutory authority as well as its constitutional authority under section 21(c) of the Revised Organic Act of 1954, under which the Supreme Court possesses the final word on questions of court practice and procedure as well as matters of judicial administration.

Bill No. 36-0277 completely overhauls the substantive probate laws of the Territory. As such, its adoption will require a near-complete rewrite of the Virgin Islands Rules for Probate and Fiduciary Proceedings to ensure that the procedural rules remain consistent with substantive law. Moreover, the Virgin Islands Judiciary will need to develop new internal administrative procedures, issue new forms, and so forth. It will likely also involve changes in our electronic-filing system and internal case-management system, which may require programming changes to our CMS system with the involvement of our vendor, Thomson Reuters, and require the Judicial Branch to provide new training to its staff and judicial officers.

None of these are easy tasks: they will take time, require cooperation and involvement not just from judges and court staff but also the Virgin Islands Bar, and cost money. Again, the costs associated with this are not included in the Judicial Branch's Fiscal Year 2027 appropriation, and Bill No. 36-0277 does not provide a supplemental appropriation to allow the Judicial Branch to bear those costs.

3. The January 1, 2027 Effective Date is Unrealistic

Section 3(a) of Bill No. 36-0277 provides that the legislation would go into effect on January 1, 2027. Even if the Legislature expeditiously passed Bill No. 36-0277 and the Governor immediately signed it into law, the Virgin Islands Judiciary simply cannot comply with the extensive changes—outlined above—in such a short amount of time. Moreover, to ensure a successful transition, training would also need to be provided to members of the Virgin Islands Bar, so that they can become educated on the new law and competently advise their clients. At an absolute minimum, the effective date should be changed to January 1, 2028.

I hope that the Legislature will consider appropriate amendments to Bill No. 36-0277 to address the above concerns. However, I urge the Legislature to remember that while our antiquated probate code might contribute to prolonged estate administration, it is not the *only* cause. Most importantly, the Legislature must remain cognizant that changing substantive probate laws going forward may allow for quicker and more efficient administration of future estates but have little to no impact on the probate cases currently pending in the Superior Court that would continue to be governed by the current antiquated code.

Different approaches are needed to address the current probate backlog. I have outlined several potential options in past State of the Judiciary addresses, such as funding more judgeships; converting the magistrate judges to full Superior Court judges; encouraging virtual proceedings; and even establishing an online court. I hope that the 36th Legislature, and legislatures that follow, will consider these and other potential reforms alongside the changes proposed by Bill No. 36-0277. As always, the Virgin Islands Judiciary stands ready to work cooperatively with the Legislature, the Virgin Islands Bar, and other stakeholders to ensure that any reforms achieve their intended objectives while promoting the fair, orderly, and efficient administration of justice.

Again, thank you for the opportunity to provide these comments on this issue of public importance, and for the Legislature's continuing commitment to improving the administration of justice in the Territory.

Sincerely,



Rhys S. Hodge
Chief Justice