



# THE PATE LAW FIRM

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VIA EMAIL [senatorcarlajoseph@legvi.org](mailto:senatorcarlajoseph@legvi.org)

Senator Carla J. Joseph  
Chair, Committee on Rules & Judiciary  
36<sup>th</sup> Legislature of the Virgin Islands

## Re: Bill 36-0101

Dear Members of the Committee on Rules and Judiciary,

I am Russell Pate, an attorney practicing in the U.S. Virgin Islands for nearly twenty years. I am also the current President of the Virgin Islands Bar Association, and for the past 60 years, the only second-time elected President of the VI Bar Association. I am intimately familiar with court delay in the U.S. Virgin Islands, and the problems of lack of court funding, staffing, resources, and deteriorating courthouses and courtrooms.

Bill 36-0101 is a step in the right direction. We are moving to a middle-ground. The Supreme Court was believed to have too much power with retaining judges after their tenures expired. The Governor proposed legislation to curtail that power. Yet, not having enough judges to resolve disputes hurts the public and undermines confidence in the Rule of Law.

The first section of the bill closes the paradox that a judge, not renominated, leaves the bench even when a Governor has not timely moved to nominate a new judge. This aligns with federal practice where our federal judges are appointed to 10 years terms by the U.S. President with confirmation by U.S. Senate. However, when a federal judge is not renominated, that USVI federal judge is able to continue to serve until his or her replacement is nominated and confirmed.

The second section loosens the Court's ability to keep – or fill in – judges when needed. This is important, as special circumstances always do arise, particularly when dealing with thousands of legal cases. Here, the Court has the ability to make a specific fact-finding decision to use a judge outside of the normal statutory parameters.

Last, adding four attorneys as part-time magistrates has been recommended by the USVI Bar for years. These attorneys can help on low level cases: Probates, small claims, uncontested divorce, basic real estate, or foreclosure issues on the civil side. On the criminal side, perhaps parking tickets and other quasi-criminal administrative fines without the possibility of jail time. In total, these represent thousands of small cases.



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The public wants Justice now. And they deserve Justice that's timely. Perfect justice is impossible. We are human. But 90% justice in one year is better than 98% justice 20 years later. The real key for administering Justice is having all judicial positions filled... with fair and hard-working judges... at all times.

Last, I would comment on a Balance of Powers problem. The Governor nominates judges. This is normal for many States that do not hold judicial elections. However, the Governor also does retention (or re-nominations). This is not best practices because the Executive Branch is a huge litigant before the Courts. On the criminal side, the Executive Branch brings every criminal prosecution through the VI DOJ. On the civil side, the Executive Branch, via its multiplicity of agencies, is the defendant (or plaintiff) sometimes in dozens of lawsuits every year. Thus, the Governor is re-nominating judges with a personal stake in the litigation before those judges.

When a person is nominated to be a judge, the Governor touts the nominee's character and credentials. Yet, when not renominated, the Governor never makes a statement that the judge was a bad judge by explaining the Governor's reasoning. The Judge is simply not re-named. These judges who are not renominated have no recourse - even if they were great judges but not retained purely for political reasons. This does not serve justice or the public at large.

For fairness – and to reduce the perception of conflict-of-interest – I highly recommend the Senate take over the re-nomination (retention) process. We will get better attorneys willing to serve as judges, if those attorneys know they will be evaluated on the merits of their work without a chance of losing their judgeship due to political whims.

If the Senate, upon review of the Judge's record and demeanor and other factors, votes not to renominate (retain) – then the selection of nominating a new judge goes to the Governor. This is fairer process with less conflicts-of-interest as the Senate is more impartial. The Senate is hardly ever a Plaintiff or Defendant in lawsuits. And in fact, if the Senate is sued or is suing – a specially appointed judge can be used – so there is no issue of even an appearance of conflict. Then, the public can and will place more confidence in our appointed judges.

I am happy to take any questions, as I thoroughly enjoy the Q&A and discussion the most. Thank you.

Best Regards,

J. Russell B. Pate, Esq.  
Attorney at Law