Recent Jurisdictional Developments in the Court System of the Virgin Islands

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I. Introduction

Recent developments have occurred in the United States Virgin Islands involving an expansion of local court jurisdiction. This jurisdictional expansion stems from federal legislation enacted in 1984 which granted the Virgin Islands government the authority to give their local courts a greater degree of jurisdictional control. In October 1990 the first stage of this jurisdictional expansion went into effect. Another change took effect on October 1, 1991, and still another is planned for October 1, 1993.

II. History of Public Law 98-454

On November 3, 1981, the people of the Virgin Islands rejected the proposed Fourth Constitution of the Virgin Islands. The Constitution had previously been approved by Public Law 97-21 for submission to the voters of the Virgin Islands and would have repealed the local government provisions of the Revised Organic Act of the Virgin Islands, the territory’s basic charter, as well as some other provisions of federal law which had been superseded but never repealed. The Constitution also would have reformed the Organic Act to provide for an improved system of appellate review. The defeat of the proposed Constitution prompted Senate Bill 2729, introduced by Senator Lowell P. Weicker on July 14, 1982, to amend and repeal various provisions of the Virgin Islands Revised Organic Act.

The purpose of Senate Bill 2729 was to modernize the judicial

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1 Public Law 94-584 had previously authorized the people of the Virgin Islands to organize a government pursuant to a constitution of their own adoption. Public Law 97-21, which was enacted July 9, 1981, approved such a constitution for the United States Virgin Islands for submission to the Virgin Islands people. Public Law 97-21 contains this proposed constitution.


3 The Revised Organic Act of 1954 superseded the Organic Act of 1936, thereby taking its place to become the new basis charter of government for the territory. It makes complete provisions for the legislative, executive, and judicial branches of government and defines the power of each. It is more detailed than the previous Act of 1936 and is intended to grant a greater degree of autonomy. Revised Organic Act of 1954, 48 U.S.C. § 1541 (1982).

4 S. 2729, 128 Cong. Rec. at 8246.

5 Id.

6 Id. at 8240.

system of the Virgin Islands to make the territory more autonomous.\(^7\) The bill granted the Virgin Islands power similar to that held by the states, to create its own system of appellate review and to give the people of the Virgin Islands the authority to expand the jurisdiction of their local courts provided that the added jurisdiction did not infringe upon the standard jurisdiction of the federal courts.\(^8\) Legislators recognized that although the authority to make this jurisdictional change must come from Congress, the decision to undertake the expansion and the manner in which to do so should be left to the people of the Virgin Islands.\(^9\) Ultimately, an amended form of the bill was incorporated into House Resolution 5561, which was passed on October 5, 1984, as Public Law 98-454.\(^10\)

III. Effects of Public Law 98-454

Title 48 of the United States Code prescribes the federal government’s control over the territories.\(^11\) Subchapter V of chapter 12 of the title deals specifically with the judiciary of the U.S. Virgin Islands.\(^12\) These provisions of title 48 are incorporated into the Virgin Islands Code by the Revised Organic Act.\(^13\)

Public Law 98-454 created changes in both title 48 and in the Revised Organic Act of the Virgin Islands. As a result of the changes, judicial power of the Virgin Islands was vested in the district court and “in such appellate court and lower local courts as may have been or may hereafter be established by local law.”\(^14\) Where previously there had only been local trial courts, the new law gave the Virgin Islands government the power to create a local appellate court as well.\(^15\) In addition, the new law allowed the local government to vest the local trial court with greater jurisdiction—“jurisdiction over all causes in the Virgin Islands over which any court established by the Constitution and laws of the United States does not have exclusive jurisdiction.”\(^16\) This gave the district court of the Virgin Islands the same jurisdiction as a state district court with addi-
tional jurisdiction over those cases in which jurisdiction is not vested in the local courts, excluding petty civil and criminal matters.17

Until the local government of the Virgin Islands establishes a local appellate court, the appeals process will continue as it did prior to the new law, that is cases from the local trial court cases will go to the U.S. District Court and from there to the U.S. Circuit Court of Appeals for the Third Circuit.18 One change, however, is that cases will be heard by a separate appellate division of the district court, consisting of a three judge panel, instead of being presented to a single judge as before.19 Once the local government creates a local appellate court, appeals from the local trial court will go to the local appellate court as in a state court system, and from there must apply for certiorari to the U.S. Supreme Court.20 However, for the first fifteen years after the creation of the appellate court, the U.S. Court of Appeals for the Third Circuit will continue to have "jurisdiction to review by writ of certiorari all final decisions of the highest court of the Virgin Islands from which a decision could be had."21

IV. Interpretation of Public Law 98-454

The true intention of the changes embodied in Public Law 98-454 is found in the legislative history. According to an analysis of House Resolution 5561, the amendment to 48 U.S.C. 161222 and section 22a of the Revised Organic Act are meant to confer on the district court of the Virgin Islands jurisdiction equal to that of a district court of the United States.23 Thus, despite the decision in Chase Manhattan Bank v. South Acres Development Co.,24 which denied diversity jurisdiction to the district court of a United States territory, in that case Guam, section 22a states specifically that the district court of the Virgin Islands has the diversity jurisdiction provided for in 28 U.S.C. § 1332, in addition to federal question jurisdiction.25 The amendments to section 1611 allow the legislature of the Virgin Islands to

17 The Jurisdiction of the District Courts of the Virgin Islands "shall not extend to civil actions wherein the matter in controversy does not exceed the sum or value of $500, exclusive of interest and costs; to criminal cases wherein the maximum punishment which may be imposed does not exceed a fine of $100 or imprisonment for six months, or both; and to violations of local police and executive regulations." Id. § 1612(b).
18 Id. § 1613.
19 Id.
20 Id.
21 Id.
22 Id.
24 Chase Manhattan Bank v. South Acres Development Co., 434 U.S. 236 (1978). In this case, the Supreme Court unanimously held that 28 U.S.C. § 1332, granting diversity jurisdiction, did not extend to Guam, and did not authorize the District Court of Guam to exercise federal diversity jurisdiction.
vest in local courts jurisdiction over any case in which federal courts
do not have exclusive jurisdiction. By framing the statute this way,
Congress gave the Virgin Islands legislature the ability to grant more
jurisdiction to its local territorial courts while at the same time giving
them the power to take jurisdiction away from its district court. This
allows the people of the territory discretion in deciding when their
local courts are ready to take on added jurisdiction and in what
manner.

On February 1, 1985, the Virgin Islands Legislature resolved to
give their local territorial courts expanded jurisdiction when it
passed Bill No. 5040 which amended section 76 of the Virgin Islands
Code.\footnote{26 1985 V.I. Sess. Laws 5040.} Previously, the local territorial courts had exclusive original
jurisdiction over all civil actions of $500 or less, all criminal cases
where the maximum punishment did not exceed a fine of $100 or
imprisonment of 6 months, or both, and all violations of police and
executive regulations.\footnote{27 V.I. Code Ann. tit. 4, § 75 (1976 & Supp. 1991).} The territorial court had jurisdiction con-
current with that of the district court in the following cases: civil
actions with claims of more than $500 but less than $200,000, pro-
bate and domestic cases, and criminal actions where the maximum
sentence exceeded a fine of $100 or imprisonment for 6 months, but
where the sentence did not exceed imprisonment of 5 years or a fine
as prescribed by law.\footnote{28 Id. at § 76 (1985 & Supp. 1991)(emphasis added).} The district court had exclusive jurisdiction
over all other cases\footnote{29 Id. at § 32 (1985 & Supp. 1991).} including jurisdiction like the district courts of
the fifty states over all cases arising under the Constitution, treaties,
and laws of the United States, regardless of the sum or value of the

By Act 5040, however, the legislature provided that the territo-
rial court would gain jurisdiction, concurrent with that of the district
court, over criminal actions where the maximum sentence did not
exceed fifteen years.\footnote{31 1985 V.I. Sess. Laws 5040.} This Act also provided that one year later, the
territorial court would have the added jurisdiction, concurrent with
that of the district court, over all criminal actions unless during that
year the presiding judge of the territorial court determined that this
increase in jurisdiction would be burdensome to the court.\footnote{32 Only part of the expansion planned by Act 5040 took effect on October 1, 1991. Changes in civil jurisdiction went into effect in 1991, but changes in the criminal jurisdiction were postponed until October 1993 by Act 5719. 1991 V.I. Sess. Laws No. 5719.}

Act 5040 was to become effective on March 1, 1985,\footnote{33 Id.} but on
that date, by Act 5045, the legislature postponed the expansion of
jurisdiction until October 1, 1987. The change was again postponed on October 14, 1986, by the Omnibus Authorization Act of 1987. This Act further amended Act 5040, as amended by Act 5045, and it was not to become effective until October 1, 1990. This first jurisdictional expansion finally went into effect on October 1, 1990.

At the time of this legislation, the legal community in St. Thomas was still uncertain of the merit of this change, because there was a tremendous backlog of cases in the territorial court. Nevertheless, the provision went into effect and it will take some time to see what its effect will be on the court system.

In the meantime, on August 29, 1991, the Virgin Islands legislature passed local law No. 5594 which amended the Virgin Island Code title 4 section 76 to vest jurisdiction in the territorial court over all civil matters regardless of the amount in controversy. This change became effective October 1, 1991, exactly one year after the territorial court’s prior jurisdictional expansion. On this date, by local law No. 5040, the territorial courts were also to receive jurisdiction over all local, non-federal criminal cases regardless of the length of sentence. However, due to the legislature’s passage of local law No. 5710, this further criminal jurisdictional expansion was postponed until October 1, 1993.

In enacting these amendments in the jurisdictional section of the Virgin Island Code, the Virgin Islands legislature used the discretionary power given to it by Public Law 98-454 to decide not only when, but how to institute the expansion of jurisdiction. The legislature could have granted exclusive jurisdiction to the territorial courts over these criminal matters, subject only to the ordinary jurisdiction of a federal district court. However, the law as enacted changed title 4, section 76 in its relevant portions, giving the local territorial court original jurisdiction concurrent with the district court over criminal actions where the maximum sentence does not exceed imprisonment for fifteen years or a fine as prescribed by law,

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36 Id.
37 However, there is a backlog of cases in the District Court of the Virgin Islands as well. Much of this is due to the fact that there are currently no permanent federal judges sitting in the Virgin Islands and have not been any since December of 1989. Since then and until such time as any permanent judges are appointed for the Virgin Islands District Court, judges are sent down from the states to sit on a temporary, rotating basis.
39 Id.
in addition to those cases over which it previously had concurrent jurisdiction.\textsuperscript{43} The district court retained jurisdiction to hear, concurrently with the territorial court, all cases it was previously able to, in addition to all civil matters with claims over $200,000 and, for the time being, criminal cases where the maximum punishment exceeded 15 years.\textsuperscript{44}

Public Law 98-454 specifically states that "the District Court of the Virgin Islands shall have general original jurisdiction in all cases in the Virgin Islands the jurisdiction over which is not then vested by local law in the local courts of the Virgin Islands . . ." provided that this does not extend to such petty civil and criminal matters as previously mentioned or to local police and executive regulations.\textsuperscript{45} This statute may be interpreted to mean either that the district court will have jurisdiction only over cases where jurisdiction is not vested in the local courts at all, or that the district court has jurisdiction over any case, even those the local courts also have jurisdiction over, so long as the local courts' jurisdiction is not expressly exclusive.\textsuperscript{46}

The Court of Appeals for the Third Circuit recently interpreted this section to mean that jurisdiction of the District Court of the Virgin Islands over local matters shall not be divested until the Virgin Islands legislature specifically enacts a law to that effect.\textsuperscript{47} The court resolved that the decision as to whether the jurisdiction over strictly local causes shall be vested in the district courts or the local courts will be made by local law,\textsuperscript{48} stating that "there is nothing in the language of Section 1612(6) that suggests that Congress intended to divest the District Court of jurisdiction over local actions immediately."\textsuperscript{49} This divestment will not occur, the court concluded, until the Virgin Islands legislature enacts a law which effects the power created by the 1984 amendments.\textsuperscript{50}

\textsuperscript{43} V.I. Code Ann. tit. 4, § 76 (1985 & Supp. 1991). Previously concurrent jurisdiction existed in civil cases wherein the amount in controversy was between $500 and $200,000; in probate and domestic cases, and in criminal actions where the maximum punishment did not exceed 15 years imprisonment or a fine as prescribed by law. \textit{Id}.

\textsuperscript{44} Id., § 75 (1986 & Supp. 1991). The only other limit on the jurisdiction of the district court was as to petty civil and criminal cases and police and executive regulations, as previously vested exclusively in the territorial courts by title 4, section 75. \textit{Id}.


\textsuperscript{46} The local courts are explicitly given exclusive jurisdiction over petty civil cases—those $500 and under; over very minor criminal cases wherein the maximum punishment does not exceed a fine of $500 or imprisonment for six months or both; and over all violations of police and executive regulations.

\textsuperscript{47} Estate of Thomas Mall v. Territorial Court of the Virgin Islands, 923 F.2d 258 (1991).

\textsuperscript{48} \textit{Id} at 263.

\textsuperscript{49} \textit{Id} at 264.

\textsuperscript{50} \textit{Id}. Such action was taken on August 29, 1990, when the legislature vested jurisdiction in the trial court over all civil actions regardless of the amount. Act of October 1, 1991, by local law No. 5594. \textit{Id}.
VIRGIN ISLANDS JURISDICTION

V. Allowance for Local Appellate Courts

The district court of the Virgin Islands has jurisdiction over another area usually reserved for federal district courts—that of appellate jurisdiction over cases from the territorial courts. Under title 4, section 33 of the Virgin Islands Code "the district court has appellate jurisdiction to review the judgments and orders of the territorial court in all civil cases, in all juvenile and domestic relations cases, and in all criminal cases of which the defendant has been convicted, other than on a plea of guilty."51 This jurisdiction is given by the Revised Organic Act and is also reflected in 48 U.S.C. section 1613a.52 Public Law 98-454 amended 48 U.S.C. section 1611 to allow the local legislature to establish local appellate courts in addition to the local trial courts.53 Section 1613 governs the relationship between the United States courts and these local appellate courts.54 Section 1613a provides for the system that will govern the appeals process until these local appellate courts are established.55

Section 1613a changed the previously existing system so that appeals from the local court to the district court will be heard by a panel of three judges who constitute the appellate division of the district court.56 The presiding judge of the appellate division will be the chief judge of the district court, and the other judges will be designated by the chief judge from among the judges serving on the district court. Not more than one of these appellate judges may be a territorial court judge.57 Further, the concurrence of two judges is required for a decision on the merits of an appeal, although the presiding judge alone may make appropriate orders with respect to an appeal prior to a hearing on the merits.58

The Court of Appeals for the Third Circuit will continue to have jurisdiction over appeals on final decisions of the district court appealed from the local courts.59 It is important to note that 48 U.S.C. section 1611 merely gives the legislature the power to establish a local appellate court, it does not mandate it.60 The Virgin Islands legislature is free to determine if there is a need for such a court and

55 Id. § 1613(a).
56 Id. § 1613(b). Previously, appeals from the local court were heard in the district court by a single judge who had the power to overrule the territorial court judge's decision.
57 Id.
58 Id. § 1613(a).
59 Id.
whether the funds exist to finance one. If the Virgin Islands legislature decides that an appellate court is appropriate, it can enact a system which reflects the appellate court systems in the states.

Section 1611, which deals with the creation of an appellate court, was controversial when it was enacted as a bill in Congress because a vote had previously been taken in the Virgin Islands whereby the people had declined to adopt a local appellate court. Therefore, it must be emphasized that although this law gives the legislature discretion to enact a provision establishing a local appellate court when it decides one is economically feasible, the legislature is not required to do so. When the local legislature deems it to be cost effective to establish a local appellate Court, provisions exist whereby the decisions of such a local appellate court are to be reviewed by the Third Circuit Court of Appeals for the first fifteen years following its establishment. The Third Circuit's Judicial Council would then report on whether this local appellate court had developed sufficient institutional traditions to justify direct review by the U.S. Supreme Court.

In other words, once the legislature does choose to create its own appellate process, this legislation requires fifteen years of further review by the Third Circuit Court of Appeals. This period may be shortened, however, on advice of the Third Circuit Judicial Council. 48 U.S.C. section 1611 thus does not create a local court of appeals, but allows the Virgin Islands legislature to create this court for review of appeals of the territorial court. Public Law 98-454 thus made changes in 48 U.S.C. section 1611-1613a such that the relations between the local courts of the Virgin Islands and the federal courts shall be the same as the relations between the state courts and the federal courts, if the legislature of the Virgin Islands so chooses.

VI. Conclusion

The district court of the Virgin Islands is on its way to becoming a district court more like those of the fifty states—at such time and to the extent as the local legislature sees fit. Public Law 98-454 gives the Virgin Islands legislature both the power to create their own lo-

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61 Id.
62 Id.
63 Letter from Judge Henry L. Feuerzeig to Ron Se Lugo, Virgin Islands Congressional delegate (July 22, 1982) (discussing S. 2729).
64 Id.
66 Id.
67 Id.
68 Id.
cal appellate court system and the power to give their local lower courts broader subject matter jurisdiction. By leaving the decision as to when, if, and how such an appellate court will be created, Congress recognized the territory's ability to govern itself and helped to make the territory of the Virgin Islands more autonomous.

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