

The Virgin Islands Consortium

Mapp And Dunston Attorneys File Briefs In Court

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ST. CROIX -- A decision will soon be made determining the authority or lack thereof of Governor Kenneth Mapp to remove a presiding judge from his or her position. The governor's announcement last month that he'd replace current presiding Judge Michael Dunston with Judge Harold Willocks raised many eyebrows and ultimately led to Judge Dunston [filing suit against the governor](#) -- contending that the decision was an overstepping of Mr. Mapp's authority.

The territory's district court on this island [granted](#) Judge Dunston a ten-day restraining order against the governor. On Tuesday, both sides filed briefs, making arguments in support of their case. The court is expected to rule on the matter soon.

In his argument, the governor contends that his decision to remove Judge Dunston as presiding judge of the Superior Court falls in line with Congress' design for the Virgin Islands.

"The existence and duties of the office of the Presiding Judge fall squarely within the domain of local law as delineated by Congress. While "Congress [has] implicitly incorporated the principle of separation of powers into the law of the territory," *Smith v. Magras*, 124 F.3d 457, 465 (3d Cir. 1997), these incorporated principles are not identical to those embodied in the U.S. Constitution. In the Organic Act, Congress set up a three-branch government, but declined to establish a cookie-cutter mold of the U.S. Constitution and left many details to "local law,"" reads part of Mr. Mapp's brief, seen [here](#).

It adds: "In any event, the Governor's removal power does not run afoul of any inherent separation of powers. Separation of powers problems arise when the other branches intrude on the "irreducible inherent authority" of the courts. *Eash v. Riggins Trucking Inc.*, 757 F.2d 557, 562 (3d Cir. 1985) (en banc). This irreducible authority is circumscribed, "encompass[ing] an extremely narrow range of authority involving activity so fundamental to the essence of a court as a constitutional tribunal that to divest the court of absolute command within this sphere is really to render practically meaningless the terms 'court' and 'judicial power.'" *Id.* The administrative duties of the Presiding Judge are simply not that fundamental, as they are unrelated to deciding specific cases and controversies."

Judge Dunston countered strongly in his [permanent injunction brief](#), contending that the move to remove him was "an encroachment by the Governor upon the independence of the Virgin Islands judiciary of the clearest and most egregious sort. It involves an abuse of executive power that must be restrained and remedied by this Court."

It later invokes the separation of powers between the three branches of government -- legislative, judicial and executive -- created by the Organic Act of the Virgin Islands. "Congress therefore implicitly incorporated the principle of separation of powers into the law of the territory," reads the brief, adding that, "The division of government powers among three branches of government, each separate but all coordinate, is fundamental to the United States constitutional structure and to the government of the United States Virgin Islands," citing successful cases with each quote.

On Friday, June 17, Mr. Mapp announced the appointment of Judge Willocks to serve as presiding judge of the Superior Court of the Virgin Islands, replacing current Judge Dunston.

The Consortium described the action as one that might have been without precedent, as it's extremely rare that a governor, aside from appointing judges, becomes involved in matters of the judicial branch of government.

The governor cited Virgin Islands Code Title 4, Chapter 71, which he says gives him the authority to replace Judge Dunston with Willocks as presiding judge.

That [section of the code](#) reads:

"The Governor shall designate one of the judges of the court to serve as presiding judge of the court to preside for such term, perform such duties, and exercise such authority as

may be otherwise provided by law, or by rules of the court.”

But the law, while clear on the ability of a governor to appoint a presiding judge, does not say that a governor can remove a judge from the position without the term of said judge being expired. Judge Dunston was appointed by former Governor John P. de Jongh in 2013 for a six-year term.

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