

The Virgin Islands Consortium

Third Circuit Court Of Appeals Dismisses Mapp Suit Against Dunston

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Governor Kenneth Mapp's desire to remove Judge Michael Dunston from his position of president judge of the Superior Court of the Virgin Islands, has again failed, following a 3rd Circuit Court of Appeals decision to [uphold a U.S. District Court ruling handed down in July](#), that barred the governor from ousting Judge Dunston from the presiding judge job.

The 3rd Circuit Court of Appeals heard oral arguments on the matter earlier this month.

The judgement serves as another setback for Mr. Mapp, who had hoped to replace Judge Dunston with Judge Harold Willocks to lead the Superior Court as presiding judge.

At the same time, the decision represents yet another victory for Judge Dunston, who has argued that the governor's attempt [amounted to](#) an ill-conceived, "egregious abuse of executive power, " and misguided. Judge Dunston's lawsuit also assailed the governor for violating the separation of powers balance.

"The executive branch exercising the power to strip a judge of certain discretionary judicial powers is tantamount to allowing the executive at its discretion to preclude a judge from exercising powers reserved to the judicial branch," reads portion of the Judge Curtis Gomez's opinion following the July judgement, seen in full [here](#). "That exercise is not "expressly provided [in the Revised Organic Act] or incidental to the powers," id., that the executive necessarily has. Moreover, the considerable disruption to the operation of the Virgin Islands judiciary that would result from the executive branch's at-will removal of the Presiding Judge, whose authority includes discretionary judicial acts, is precisely the type of encroachment on the operations of a co-equal branch of government that the separation of powers doctrine regards as verboten."

Backstory

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

The governor said Judge Dunston would retain his tenure as a judge of the Superior Court until September 26, 2019. Judge Dunston's last day as presiding judge would be June 26, after which Judge Willocks would commence his term as presiding judge — but that was before Wednesday's challenge.

Mr. Mapp said that his decision to replace Judge Dunston was based on the slow pace in which cases go to trial in the Virgin Islands. He said the Superior Court lost millions while attempting to computerize its system, and still remains out of sync in an age of technology. Amplifying the problem, Mr. Mapp added, some judges were failing to report to work. And while the federal judiciary has offered the Superior Court access to use its system for little to no fees, the Superior Court had yet to utilize the offer. "The Superior

Court remains lethargic, non-functioning and simply, in 2016, a paper operation,” Mr. Mapp said.

The governor added that in his attempt to “invigorate” the Superior Court to help it meet the demands of the 21st Century — including speeding up the trials of over 175 detainees at Golden Grove, some of whom have been waiting over three years — he would transmit a bill to the Legislature calling for what is dubbed a Virgin Islands Speedy Trial Act, “that will require when persons are arrested and charged with criminal offenses in the Virgin Islands, that their day of reckoning in the court is understood and clear,” Mr. Mapp said.

The territory’s leader said that the G.V.I. is spending “huge monetary resources” to house, feed and provide medical service for detainees while they await trial. “This cannot continue,” he said.

According to Judge Dunston’s original filing, the presiding judge said he received a call from the governor on June 16, which Mr. Mapp had revealed during a press conference while announcing his action. Judge Dunston said the governor was clearly displeased with his opposition to a court unification bill sponsored by Senators Kenneth Gittens and Nereida Rivera-O’Reilly, which attempts to unify the court system in the territory and is supported by the governor.

It also includes a provision that would strip away the power Mr. Mapp exercised on June 17. Instead, the law, based on the federal system, would call for the rotation of judges within the Superior Court every three years, based on seniority, to serve as presiding judge.