IN THE SUPREME COURT
OF THE VIRGIN ISLANDS
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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

IN RE: **VINCENT A. FULLER, WALTER G. LATIMER, RENEE D. DOWLING, and MATTHEW D. SEYMOUR,** Petitioners.	**S. Ct. Civ. No. 2022-0042**

On Petition for Extraordinary Writ

Considered and Filed: August 25, 2022

Cite as: 2022 VI 17

BEFORE: **RHYS S. HODGE**, Chief Justice; **MARIA M. CABRET**, Associate Justice; and **IVE ARLINGTON SWAN,** Associate Justice.

APPEARANCES:

Peter J. Lynch, Esq.
Fuller & Lynch Advocacy Group, PLLC
St. Thomas, U.S.V.I.
Attorney for Petitioners,

Kevin A. Rames, Esq.
K.A. Rames, PC
St. Croix, U.S.V.I.
Attorney for Respondent Virgin Islands Bar Association.

OPINION OF THE COURT

PER CURIAM.

¶ 1 This matter comes before the Court pursuant to a document, captioned "Verified Petition for Extraordinary Writ," filed by four members of the Virgin Islands Bar—Vincent A. Fuller, Esq., Walter G. Latimer, Esq., Renee D. Dowling, Esq., and Matthew D. Seymour, Esq. (collectively the "petitioners")—which seeks to enjoin, on numerous grounds, the enforcement of Supreme Court Rule 208 by the Virgin Islands Bar Association ("VIBA"). For the reasons that follow, we deny the petition.

I. BACKGROUND

¶ 2 "This Court, as the court of last resort of the Virgin Islands, certainly possesses the constitutional, statutory, and inherent authority to regulate all aspects of the practice of law in the Territory, as well as to adopt the rules of practice and procedure for the courts of the Virgin Islands, including those pertaining to the admission and conduct of attorneys." *In re V.I. Bar Ass'n*, 75 V.I. 393, 396 (V.I. 2021); see also 4 V.I.C. §§ 32(e)-(f). Exercising this authority, this Court and its predecessors established the Virgin Islands Bar Association as an integrated bar association "created to assist this Court in regulating the practice of law in the territory."[1] V.I. S.CT.R. 205(a). This assistance includes, among many other things, proposing for this Court's consideration improvements to the administration of justice and the regulation of the practice of law. *See In re V.I. Bar Ass'n*, 75 V.I. at 397-98.

¶ 3 On August 9, 2007, this Court promulgated Supreme Court Rule 208, which established mandatory continuing legal education ("CLE") requirements for all active members of the Virgin Islands Bar and established the VIBA as the administrator of the Rule. Rule 208 required each active member to earn 12 hours of CLE credits each year, including at least two credit hours of "Ethics and Professionalism Programming." Pursuant to its role as the administrator, the VIBA

[1] The VIBA was first established as an integrated bar association for this purpose through a March 2, 1956 order of the United States District Court of the Virgin Islands, which at the time possessed exclusive jurisdiction to govern the practice of law in the Virgin Islands. The District Court was divested of that jurisdiction on October 1, 1991, when such jurisdiction was transferred to the Superior Court (then known as the Territorial Court), *see In re Moorhead*, 27 V.I. 74 (V.I. Super. Ct. 1992), and then again transferred to this Court upon its assumption of jurisdiction on January 29, 2007, *see Hypolite v. People*, 51 V.I. 97 (V.I. 2009). As part of these transitions, the Superior Court, and later this Court, assumed control over the VIBA and continued its status as an integrated bar association.

was required, among other things, to review and approve courses and activities for CLE credit, accept certification forms or other documentation filed by attorneys, conduct a compliance audit after the end of each reporting period, and to file a notice of non-compliance with this Court to request the automatic suspension of any attorney who both did not comply with the Rule and failed to cure the delinquency in a timely manner. Rule 208 also contemplated that the VIBA would provide its own CLE programs, and expressly provided for all programs offered by the VIBA to receive automatic approval.

¶ 4 More than ten years after Rule 208 first went into effect, the VIBA requested that this Court amend Rule 208 in numerous respects. Among other changes, the VIBA proposed (1) that CLE certification and compliance be staggered so that active members demonstrate that they earned 24 credit hours over a two-year period instead of 12 credit hours during a one-year period; (2) that in addition to the "Ethics and Professionalism Programming" requirement, that those 24 credits include at least four credit hours in the area of "Virgin Islands Law Programming," at least two credit hours in "Technology Programming," and at least one credit hour in "Mental Health and Substance Use Disorder Programming"; and (3) that the VIBA be permitted to enact regulations or otherwise take certain actions, such as adding additional automatically approved CLE course providers, on its own without the need to request that this Court amend the Rule.

¶ 5 In a February 28, 2019 order, this Court agreed with the VIBA that Rule 208 should be amended, and released for public comment a proposed amended Rule 208. This Court, however, did not adopt the VIBA's proposal without modifications. For instance, rather than grant the VIBA *carte blanche* to enact regulations, the proposed Rule 208.2 required that such regulations to receive approval from this Court before going into effect. And while this Court implemented the VIBA's request for a staggered certification and compliance period, it did so by dividing active members into two reporting groups based on their last name, with Reporting Group 1 (last names beginning with the letter "A" through "K") reporting their two-year compliance in odd years beginning in 2021 and Reporting Group 2 (last names beginning with the letter "L" through "Z") reporting their two-year compliance in even years beginning in 2022. And recognizing that the 2019 CLE reporting period had already begun, the Court provided as a transition provision that the former Rule 208 would continue to apply to CLE requirements through the conclusion of that reporting period. This Court further established a pro-rated reporting requirement for those in Reporting Group 1 so that those members would only need to complete 12 credit hours in 2020 for reporting in 2021.

¶ 6 The February 28, 2019 order provided for the Bench, Bar, and public to file comments on the proposed amended Rule 208 with the Clerk of this Court within 30 days. This Court received one comment from James L. Hymes, III, Esq. on March 12, 2019, which noted that the proposed amended Rule 208 had inadvertently omitted an intended reference to the Committee of Bar Examiners in proposed Rule 208.6(C). In a March 13, 2019 order, this Court modified the proposed Rule 208.6(C) in the manner proposed by Attorney Hymes. This Court did not receive any other comments, and the amended Rule 208, as modified by the March 13, 2019 order, went into effect.

¶ 7 On August 8, 2022, the petitioners filed their petition with this Court. The petitioners assert that the VIBA proposed amendments to Rule 208 "without prior notice or approval by VIBA's membership" and "without first submitting them to the Court's Advisory Committee on Rules." (Pet. 8.) They further assert that the VIBA failed to submit proposed regulations to this Court in a timely manner, resulting in this Court not approving such regulations until March 19, 2021, and that the VIBA was purportedly "deficient in its role as the online CLE records custodian" since allegedly "in the course of multiple changes to the VIBA website between 2020 and the present" certain "previously uploaded CLE certificates and records of prior approved CLE have been lost." (Pet. 10.) They further contend that the VIBA failed to comply with Rule 208.7(D)(1)—providing that the VIBA shall conduct its audit "[n]o earlier than one month and no later than six months following the reporting deadline"—in that the reporting deadline for Reporting Group 1 had been January 31, 2021, yet the VIBA sent deficiency notices to members of Reporting Group 1 much later, including a delinquency notice to Fuller on July 8, 2022, and that the VIBA seemingly provided incorrect information in those notices by—for example—advising that the attorney may file an answer within 90 days even though Rule 208.7(D)(2)(c) provides that an answer must be filed within 30 days or else the attorney is "deemed to have conceded all the facts set forth in the Notice of Delinquency." Finally, they allege that the VIBA "has set itself up as the exclusive, or near exclusive, vendor of mandatory VI Law CLE" in that "[a]side from VIBA, there are no alternate sources from which Petitioners . . . can obtain VI Law CLE to satisfy their MCLE requirements," which they assert violates the federal Clayton Act, 15 U.S.C. § 12 *et seq.* (Pet. 21.) As a remedy, the petitioners request that this Court suspend the enforcement of the amended Rule 208; rescind the amended Rule 208 and revert to the prior Rule 208; that it require the VIBA to "get approval of a majority of [its] members prior to submitting rule change proposals;" that it "[c]law back from VIBA . . . all fines and fees collected" pursuant to amended Rule 208; and that it assess money damages against the VIBA. (Pet. 25-26.)

II. DISCUSSION

¶ 8 "The Supreme Court shall have all inherent powers, including the power to issue all writs necessary to the complete exercise of its duties and jurisdiction under the laws of the Virgin Islands," which "includes jurisdiction of original proceedings for mandamus, prohibition, injunction, and similar remedies to protect its appellate jurisdiction." 4 V.I.C. § 32(b). This Court also possesses the "exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted to the practice of law." 4 V.I.C. § 32(e). *See also In re Doe*, 58 V.I. 219, 221 (V.I. 2013). Although the petitioners caption their filing as a "Verified Petition for Extraordinary Writ" and cite to Virgin Islands Rule of Appellate Procedure 13—which governs original proceedings for writs of mandamus or prohibition pursuant to section 32(b)—they also cite to section 32(e) as the jurisdictional basis for this proceeding. But as we have previously emphasized, section 32(e) codifies a power exclusively reserved only to this Court, and thus there is no right for private litigants, such as the petitioners, to cite it as an independent basis for invoking our original jurisdiction in the absence of a court rule or order that permits such a proceeding. *In re V.I. Bar Ass'n*, 75 V.I. at 397 (stating that this Court is "under no obligation whatsoever to consider, or even docket," a petition filed pursuant to section 32(e)). Therefore, we treat the petitioners' petition as one brought pursuant to section 32(b).

¶ 9 Because the petitioners' petition requests that this Court both mandate action and prohibit action, we construe as a petition for writ of mandamus and prohibition. *See In re People of the V.I.*, 55 V.I. 851, 985 n.4 (V.I. 2011) ("A writ of mandamus may seem more appropriate if the form of the order is to mandate action, and a writ of prohibition if the order is to prohibit action.") (quoting *United States v. Santtini,* 963 F.2d 585, 593 (3d Cir. 1992)). Nevertheless, it is ultimately a distinction without a difference since this Court applies the same test to determine whether a party is entitled to a writ of mandamus or a writ of prohibition. *See In re Najawicz*, S. Ct. Civ. No. 2012-0112, 2012 WL 4829227, at *1 (V.I. Oct 10, 2012) (unpublished). To obtain a writ of mandamus or prohibition, "a petitioner must establish that it has no other adequate means to attain the desired relief and that its right to the writ is clear and indisputable." *In re People of the V.I.*, 51 V.I. 374, 382 (V.I.2009) (citing *In re LeBlanc*, 49 V.I. 508, 516 (V.I. 2008)). Moreover, "even if the first two prerequisites have been met, the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances." *Id.* (*quoting Cheney v. U.S. Dist. Court*, 542 U.S. 367, 380–81 (2004)). And "[i]f the panel of the Supreme Court is of the opinion that the writ should not be granted"—as is the case here—"it shall deny the petition" without ordering an answer from the respondent. V.I. R. APP. P. 13(b).

¶ 10 We conclude that the petitioners have failed to meet their burden. While the petitioners attribute the amendments to Rule 208 to the VIBA, it was this Court—and not the VIBA—that adopted those rules pursuant to its constitutional, inherent, and statutory rule-making authority and power to regulate the legal profession. That the VIBA suggested to this Court that it consider amending Rule 208 does not change the fact that it was this Court that exercised its independent judgment to draft the amended rule, release it for public comment, and adopt it as modified by the comment submitted.[2] And while the petitioners allege that the VIBA requested that this Court amend Rule 208 without a vote of its membership, the VIBA, like other bar associations, is not a direct democracy, but rather acts through its elected Board of Governors which is authorized to "direct through the President the general management of the affairs of the Bar," V.I. BAR ASS'N BYLAWS art. III, and its elected President who may make statements on behalf of the VIBA and is expressly authorized to submit a report directly to the Chief Justice on a semiannual basis. V.I.S.CT.R. 205(c)(3). *Accord, In re V.I. Bar Ass'n*, 75 V.I. at 397 ("It is such a fundamental principle of American government as to not require citation that while private citizens,

[2] For this same reason, we reject as wholly without merit the petitioners' contention that either the VIBA or this Court were required to obtain the approval of the Advisory Committee on Rules as a prerequisite. As its name implies, the Advisory Committee on Rules performs an advisory function for this Court, *see* V.I. R. App. P. 37(b)(2), and this Court has never vested it with the type of gatekeeping function that the petitioners propose that it should exercise.

organizations, and other stakeholders may certainly lobby a legislature and its members to enact certain legislation, such groups have no right to file their proposed legislation as a bill directly with the legislature, force the legislature to hold a hearing on the bill, and then mandate that the members of the legislature debate the bill and vote on it."). Perhaps most importantly, the petitioners had the opportunity to file comments on the then-proposed amended Rule 208 with this Court but failed to do so. And while the petitioners assert they did not receive actual notice of the amended Rule 208—despite the amended Rule being distributed by both this Court and the VIBA on their respective websites—it is not the obligation of either this Court or the VIBA to provide each and every attorney with actual, personalized notice of each and every change to a court rule; on the contrary, all lawyers admitted to practice in this Court are "under a continuing obligation to keep apprised of current changes in the law, including changes in the [Court] Rules."[3] *Roger v. First Health Corp.*, No. 09-1206, 2010 WL 11526799, at *2 (C.D. Cal. Feb. 17, 2010) (unpublished). Therefore, the petitioners have failed to make any showing—let alone a clear and indisputable entitlement—that the amended Rule 208 should be rescinded in whole or in part.

¶ 11 We reject most of the petitioners' claims with respect to the VIBA's implementation of the amended Rule 208 for similar reasons. Although the petitioners correctly note that this Court did not approve VIBA's proposed regulations until March 19, 2021, the petitioners have provided this Court with no evidence whatsoever indicating that the VIBA intends to enforce those regulations retroactively to reporting periods that concluded or commenced prior to their adoption. While the petitioners assert that the VIBA violated the federal antitrust laws by providing Virgin Islands Law

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[3] In fact, the need for attorneys admitted to the Virgin Islands Bar and engaged in the active practice of law to keep abreast of changes to local law and practice in the courts of the Virgin Islands is precisely the reason the Virgin Islands Law Programming requirement was adopted by this Court.

Programming CLE programs, they ignore the reality that the Supreme Court of the United States has expressly held that integrated bar associations established by courts of last resort are fully immune from antitrust laws when acting pursuant to rules and directives promulgated by the court of last resort. *See Bates v. State Bar of Ariz.*, 433 U.S. 350, 359-60 (1977). The Virgin Islands Law Programming requirement was adopted directly by this Court, and both the initial and amended Rule 208 expressly permit the VIBA to serve as a provider of CLE courses. Perhaps more significantly, the petitioners have not provided any evidence that the VIBA has acted in an anticompetitive manner, such as by denying approval to other providers – on the contrary, the petitioners admit in their petition that the VIBA has made certain Virgin Islands Law Programming courses available for free. Nor do the petitioners acknowledge that Rule 208 provides for other means of obtaining CLE credit hours in the area of Virgin Islands Law Programming besides taking courses, such as through teaching, writing, or board and committee service, *see* V.I.S.CT.R. 208.4, and even permits attorneys to request mandatory or discretionary exemptions from that and other requirements, *see* V.I.S.CT.R. 208.3(B).

¶ 12 Nevertheless, this Court shares the petitioners' concern that the VIBA appears to have violated the express terms of Rule 208.7(D)(1), providing that a CLE compliance audit occur "[n]o earlier than one month and no later than six months following the reporting deadline," by sending a notice of delinquency to Fuller on July 8, 2022, when his reporting deadline as a member of Reporting Group 1 had been January 31, 2021. The VIBA, as a creation and arm of this Court, is "strictly limited" to those powers which are "plainly granted by th[is] Court" and which "cannot be broadened by implication." *In re Burns,* 2020 VI 16 ¶ 11 (quoting *In re Payton,* S. Ct. BA. No. 2007-0146, 2009 WL 763814, at *3 (V.I. Mar. 20, 2009) (unpublished)). The VIBA therefore lacks the authority to simply disregard the plain text of Rule 208.7(D)(1)—or any court rule for that matter—by issuing notices of delinquency more than six months after the reporting deadline. If, for whatever reason, the VIBA cannot complete its audit within the provided time period, the appropriate action is not to ignore the rule, but rather to request an extension of time from this Court, as it has done in the past. *See, e.g., In re V.I. Bar Ass'n*, S. Ct. Misc. No. 2019-0005, slip op. at 2 (V.I. Mar. 20, 2019) (granting the VIBA a five-month extension to complete outstanding CLE audit).[4] The unilateral decision of the VIBA to conduct this late audit is then further exacerbated by the VIBA's apparent decision to modify its website during the reporting period, as well as the incorrect information provided in the notice of delinquency sent to Fuller, which erroneously advised him that he possessed 90 days to file an answer to the notice of delinquency even though Rule 208.7(D)(2)(c) provides that an answer must be filed within 30 days or else the attorney is "deemed to have conceded all the facts set forth in the Notice of Delinquency."

¶ 13 Nevertheless, we deny relief for this claim as well. Of the four petitioners, only one—Fuller—has provided any evidence, in the form of the July 8, 2022 notice of delinquency, that in any way shows that they have been aggrieved by the VIBA's actions. But to obtain redress, it is

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[4] This Court notes that in a May 28, 2020 administrative order issued in response to the COVID-19 pandemic, this Court provided

> that notwithstanding any court rule to the contrary, the Virgin Islands Bar Association MAY GRANT discretionary waivers, exemptions, or deadline extensions to individual attorneys with respect to payment of Bar dues and compliance with mandatory continuing legal education requirements. The Bar Association SHALL NOTIFY the Office of Bar Admissions of any such waiver, exemption, or deadline extension it has granted within fourteen (14) days of granting the request. If the Bar Association determines that a waiver, exemption, or extension of a particular requirement should be granted to all attorneys, it MAY FILE a petition with the Supreme Court to request that such relief be ordered.

In re Judicial Branch Operations, S. Ct. Admin No. 2020-0010, 2020 WL 2790518, at *5 (V.I. May 28, 2020). However, the VIBA did not file a petition pursuant to this administrative order.

not sufficient for Fuller to simply show that the VIBA acted contrary to the procedure set forth in Rule 208. Rather, he must also prove that he possesses no other adequate means to attain the desired relief. The record contains no indication that Fuller paid any fines or fees to the VIBA based on the July 8, 2022 notice of delinquency or that the VIBA filed a notice of non-compliance with this Court requesting his suspension from the practice of law for non-compliance with Rule 208. Rather, the record reflects that Fuller responded to the July 8, 2022 notice of delinquency by submitting an answer, served on the VIBA on August 5, 2022, explaining that he believes he is in compliance with Rule 208 for the pertinent reporting period, in which he enclosed copies of certificates to support his claims. Although Rule 208.7(D)(d) directs the VIBA to respond to an answer within 14 days, Fuller did not await the VIBA's response, and instead filed a petition with this Court on August 8, 2022. Under these circumstances, it is probable—and in fact extraordinarily likely—that the VIBA will rescind the July 8, 2020 notice of delinquency, whether it be because Fuller is actually in compliance or it recognizes that the audit is untimely. Because allowing the internal process within the VIBA to run its natural course certainly represents an alternate adequate means for Fuller to obtain the only relief that he may be entitled to—suspension of the enforcement proceeding against him—we conclude that he, like the other petitioners, has failed to meet his burden.

III. CONCLUSION

¶ 14 The petitioners failed to establish that their right to the requested relief is clear and indisputable, or that they lack any adequate alternate means to attain such relief. Accordingly, we deny their petition.

Dated this 25th day of August, 2022.

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court

By: /s/ Reisha Corneiro
Deputy Clerk

Dated: August 25, 2022