

SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

SOUND SOLUTIONS, LLC, AND EUGENE IRISH,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CASE NO. ST-12-CV-88
	)	
GOVERNMENT OF THE VIRGIN ISLANDS,	)	
POLICE DEPARTMENT AND THE VIRGIN	)	
ISLANDS WATER AND POWER AUTHORITY,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION

Pending before the Court is Plaintiffs' motion for disqualification. For the following reasons, Plaintiffs' motion will be denied.

FACTUAL AND PROCEDURAL HISTORY

On June 16, 2015, this Court granted Defendant WAPA's second motion for summary judgment and dismissed this case with prejudice. WAPA filed a motion for attorney's fees and costs on July 20, 2015, and on July 22, 2015, the Court ordered WAPA to supplement the record with an "appropriately detailed application" for attorney's fees and costs by August 7, 2015.¹ Plaintiffs now move to disqualify the Court for providing "legal advice" to WAPA.

ANALYSIS

¹ In the Order, the Court noted that the July 20, 2015, motion was "not supported by an itemized, chronological record of the time spent in the defense of this case, the work performed on each date, and the identity of the attorney performing the work."

4 V.I.C. § 284(3) provides that “No judge or justice shall sit or act as such in any action or proceeding ...[w]hen in the action or proceeding or in any prior action or proceeding involving the same issues, he has been of counsel for any party to the action or proceeding.”

The undersigned has never been retained counsel for WAPA, and Plaintiffs acknowledge that the undersigned “has not entered an appearance on behalf of WAPA ... or otherwise formally represented WAPA.”² In addition, the undersigned has had no *exparte* communications with WAPA. Nevertheless, Plaintiffs move to disqualify the undersigned for ordering WAPA to supplement the record concerning its motion for attorney’s fees and costs.

In the Virgin Islands, “the American Rule against shifting fees to the losing party does not apply”³ and the “prevailing party in the judgment [may be awarded] such sums as the court in its discretion may fix by way of indemnity for his attorney's fees in maintaining the action or defenses thereto.”⁴ Superior Court Rule 67 also establishes that a “judge shall exercise his discretion in the award of costs, whether to the prevailing party or otherwise, not to exceed the taxable costs in the case, so as to discourage the filings of frivolous, vexations or false claims or defenses ...” The prevailing party “claiming any item of cost [or fees] shall attach thereto an affidavit ... that such item is correct and has been necessarily incurred in the case and that the services for which fees have been charged were actually and necessarily performed.”⁵

² Motion for Disqualification, at page 4.

³ *Williams v. United Corp.*, 2009 V.I. Supreme LEXIS 1, *3, 2009 WL 321339 (VI. 2009).

⁴ 5 V.I.C. § 541(b).

⁵ 5 V.I.C. § 543(b).

Here, Plaintiffs argue that WAPA's July 20, 2015, motion for attorney's fees and costs was not in compliance with LRCi 54.1(b) in that the motion was not supported by an itemized description of the fees and costs incurred.⁶ In addition, Plaintiffs contend that WAPA's motion should have been denied because LRCi 54.1(c) states that "[u]pon failure of the prevailing party to comply with this Rule, all costs shall be waived."

V.I. Super. Ct. Rule 7 provides that the "practice and procedure in the Superior Court shall be governed by the Rules of the Superior Court and, to the extent not inconsistent therewith, by the Rules of the District Court." However, the Supreme Court of the Virgin Islands has emphasized that the "federal rules ... 'should be invoked only when a thorough review of applicable Virgin Islands statutes, Superior Court rules, and precedents from this Court reveals the absence of any other [applicable] procedure.'"⁷ Accordingly, "the Local Rules of the District Court should represent rules of last resort rather than first resort."⁸

Foremost, the Superior Court does not follow the procedure in the District Court of the Virgin Islands as set forth in LRCi 54.1. Rather than filing a bill of costs with the Clerk of Court, a prevailing party to a Superior Court action typically files a motion for attorney's

⁶ LRCi 54.1 establishes that: "(a) Within thirty days after the entry of a final judgment or a judgment allowing costs, the prevailing party shall serve on the adverse party and file with the Clerk of the Court a Bill of Costs, together with a notice of motion when application will be made to the Clerk to tax the same.(b) Such Bill of Costs shall precisely set forth each item thereof, so that the nature of the charge can be readily understood, and shall be verified by the attorney for the applicant, stating that: (1) the items are correct, (2) the services were actually and necessarily performed, and (3) the disbursements were necessarily incurred in the action or proceeding. Counsel shall append to the verified Bill of Costs copies of all invoices in support of the request for each item."

⁷ *Vanterpool v. Gov't of the Virgin Islands*, 2015 V.I. Supreme LEXIS 23, *26-31 (VI. 2015) (quoting Sweeney, 60 V.I. at 442).

⁸ *Id.*

fees and costs that is reviewed by the judge presiding over the matter. The difference is significant because, while it appears that the Clerk of the District Court must reject a bill of costs outright that does not comply with LRCi 54.1(b), a Superior Court Judge has the discretion to deny a motion for fees and costs without prejudice.⁹ As a result, a party's noncompliance with LRCi 54.1(b) does not require the Superior Court to dismiss a motion for costs and fees with prejudice in accordance with LRCi 54.1(c).

In addition, an order to supplement the record is the functional equivalent of a denial without prejudice. Under either scenario, a party is put on notice of the deficiencies of its motion and is granted an opportunity to correct those deficiencies. By ordering WAPA to supplement the record concerning its motion for fees and costs, the Court did not provide legal advice nor comment on the merits of the motion. Instead, the Court gave WAPA the opportunity to submit an amended application for fees and costs that comports with 5 V.I.C. § 543(b) so that the Court could exercise its discretion under Superior Court Rule 67. Plaintiffs have suffered no prejudice, since they can still oppose specific parts of WAPA's request or the request in general.

A reasonable person knowing all the circumstances would not harbor doubts concerning the undersigned's impartiality. As a result, Plaintiffs' motion for disqualification will be denied.

⁹ 5 V.I.C. § 541(b) and Superior Court Rule 67 both recognize that the Court has the discretion to award costs, and inherent to that judicial power is the Court's ability to grant, grant in part, or deny, with or without prejudice, a motion for attorney's fees and costs.

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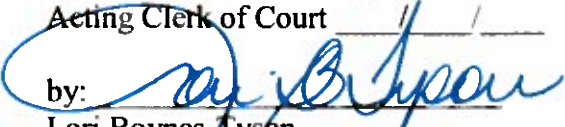
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An Order consistent with this Opinion shall follow.

Dated: September 28, 2015

ATTEST: Estrella George
Acting Clerk of Court

by: 
Lori Boynes-Tyson
Court Clerk Supervisor 10/1/15


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS