

FOR PUBLICATION

**SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

TERRENCE JOSEPH,)
)
Petitioner,)
)
v.)
)
PUBLIC EMPLOYEES RELATIONS)
)
BOARD and GOVERNMENT OF THE)
)
VIRGIN ISLANDS, DEPARTMENT OF)
)
JUSTICE, DIVISION OF PATERNITY AND)
)
CHILD SUPPORT,)
)
Respondents.)
)

CASE NO. SX-15-CV-236

Appearances:

KYE WALKER, ESQ.
The Walker Legal Group
Christiansted, VI 00820
For Petitioner

LARRY RAYMOND-ROY, ESQ.
Public Employees Relations Board
Gallows Bay, VI 00824
For Respondent Public Employees Relations Board

JOSS N. SPRINGETTE, ESQ.
Assistant Attorney General
Virgin Islands Department of Justice
Charlotte Amalie, VI 00802
For Respondent Government of the Virgin Islands

MEMORANDUM OPINION AND ORDER

BRADY, Judge.

BEFORE THE COURT is a motion filed by Attorney Joss N. Springette (“Attorney Springette”), an assistant attorney general with the Virgin Islands Department of Justice, for leave to withdraw as counsel for the Government of the Virgin Islands, Department of Justice, Division of Paternity and Child Support (“Government”). Neither the petitioner, Terrence Joseph (“Joseph”), nor the co-respondent, Public Employees Relations Board (“PERB”), has filed a response. For the reasons explained below, the Court will construe Attorney Springette’s motion to withdraw as a notice of withdrawal and order the Government to have substitute counsel appear on its behalf forthwith.

Background

Joseph was terminated from his position as an assistant director with the Virgin Islands Department of Justice, Division of Paternity and Child Support. He appealed his termination to PERB but PERB dismissed his appeal, concluding that he was not a regular employee as defined by section 530 of title 3 of the Virgin Islands Code. Joseph then petitioned the Superior Court to issue a writ of review to PERB to review the decision. Before the petition was granted, PERB and the Government appeared through their respective counsel. The Government immediately moved to dismiss the petition, which Joseph opposed. Joseph also twice moved to consolidate his appeal with other appeals (first two and then three) pending in the Superior Court from PERB that involve the same question of law. Joseph later moved for a ruling on the Government's motion to dismiss. The last action in this matter was Attorney Springette's motion for leave to withdraw because she was "resigning from the V.I. Department of Justice effective March 17, 2017," or three days after the motion was filed. (Mot. to Withdraw 1, filed Mar. 14, 2017.) No further explanation was given and, to date, substitute counsel has not appeared for the Government in place of Attorney Springette.

Discussion

Virgin Islands Rule of Civil Procedure 6-5 governs the withdrawal of attorneys. *See* V.I. R. Civ. P. 6-5 ("No attorney may withdraw an appearance except with leave of court after notice to the attorney's client.").¹ Attorney Springette did not cite this rule—or any rule—in support of her motion. She did not state that she gave notice to her "client." Attorney Springette's client is the Government of the Virgin Islands and the Virgin Islands Department of Justice, rather than Attorney Springette personally and individually, represents the Government of the Virgin Islands. *See* 3 V.I.C. § 114(a)(1). In this context, it is pointless to require that an individual assistant attorney general leaving her position with that office comply with Rule 6-5, because the office of the Attorney General of the Virgin Islands continues to represent the Government.

¹ The Virgin Islands Rules of Procedure took effect March 31, 2017, two weeks after Attorney Springette filed her motion. *See generally In re: Adoption of the V.I. Rules of Civ. P.*, Prom No. 2017-002, 2017 V.I. Supreme LEXIS 22, *1-2 (V.I. Apr. 3, 2017). Pursuant to Rule 1-1(c)(2), the new rules govern in all civil actions pending on March 31, 2017 absent a contrary order from the Supreme Court or an express finding of this Court that application of the new rules would be infeasible or work an injustice. No such order or finding is made here. Presumably substantively consistent Rule 5.2 of the Local Rules of Civil Procedure would have previously governed, through Superior Court Rule 7. *See* D.V.I. Local. R. Civ. P. 5.2(b) ("No attorney may withdraw an appearance except with leave of Court after notice to the attorney's client. All motions for withdrawal as counsel should include a verified statement as to contact with or attempts to contact the client concerning such withdrawal and an indication of service upon or efforts to serve the client with the moving papers.").

Inconsistent with the mandate of Rule 6-5, that no attorney may withdraw an appearance except with leave of court, Virgin Islands Rule of Professional Responsibility 211 directs that “[a] lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.” V.I. S. Ct. R. 211.1.16(c). That is, Rule 211 recognizes that a lawyer may withdraw her or his representation either on “notice to” or with “permission” from a court or other tribunal. It follows then, contrary to Rule 6-5, that not every attorney must be granted leave to withdraw if some may withdraw on notice. The question then is which attorneys in what circumstances may withdraw on notice and without leave of court. Under certain circumstances, courts may refuse to allow an attorney to withdraw from a case. *See Cianci v. Chaput*, 64 V.I. 682, 698 (V.I. 2016) (granting “motion to withdraw so late in the proceedings would have resulted in prejudice to both parties and unnecessarily delayed the conclusion of the matter, contrary to the interests of judicial economy.”).

Assistant attorneys general are appointed by the Governor of the Virgin Islands and may be removed by the Governor of the Virgin Islands at any time. *See* 3 V.I.C. § 113(a) (“The Assistant Attorneys General shall be appointed by the Governor, and shall hold office during the continuance in office of the Governor by whom they are appointed and until their successors are appointed and qualified, unless sooner removed by the Governor.”); *cf. Gov’t of the V.I. v. United Indus., Servs. Transp., Prof. & Gov’t Workers of N. Am. Seafarers Int’l Union*, 57 V.I. 649, 658 (V.I. 2012) (“[S]ection 113 not only vests the Governor with the power to remove an Assistant Attorney General, but provides that an Assistant Attorney General’s appointment terminates upon the conclusion of the term of the Governor who appointed him or her.”), *vacated by* 61 V.I. 753 (3d Cir. 2014), *cert denied* 135 S. Ct. 1734 (2015). Similarly, courts cannot “choose specific public defenders to represent defendants, as opposed to the Office of the Territorial Public Defender as an entity,” *In re: Joseph*, 65 V.I. at 228, because “the Legislature vested . . . oversight” of Office of the Territorial Public Defender in “the Public Defender Administration Board.” *Id.* at 231 (quoting *Fontaine v. People*, 59 V.I. 1004, 1011-12 (V.I. 2013)). It follows that courts similarly cannot compel the Governor to retain a particular assistant attorney general or refuse to allow an assistant attorney general to withdraw her or his representation. “[T]he separation of powers doctrine applies to each branch of our tripartite system of government. Thus, unless expressly provided or incidental to the powers conferred, the legislature exercises neither executive nor judicial

power, the executive cannot exercise legislative or judicial power, and the judiciary may not exercise either executive or legislative power.” *In re: Joseph*, 65 V.I. at 224 (citations omitted).

Here, Attorney Springette filed motion to withdraw because she is resigning from the Department of Justice. “Any application—whether orally or in writing—made to a court or judge for the purpose of obtaining a ruling or order directing some act to be done in favor of the applicant in a pending case is a motion.” *Der Weer v. Hess Oil V.I. Corp.*, 64 V.I. 107, 128-29 (Super. Ct. 2016) (quotation marks, brackets, and citations omitted). But calling a document a motion does not necessarily mean that the document is a motion since “regardless of its [title] . . . ultimately it is the substance . . . that controls.” *Abednego v. St. Croix Alumina, LLC*, 63 V.I. 153, 174 (Super. Ct. 2015) (citing *Island Tile & Marble, LLC v. Bertrand*, 57 V.I. 596, 612 (V.I. 2012)). In this instance, Attorney Springette’s “motion” is not a motion because she cannot here “obtain[] a ruling or order directing some act to be done in favor of the applicant in a pending case.” *Der Weer*, 64 V.I. at 128-29. The filing of a motion presupposes that the court has authority to rule on the motion and can either grant or deny the relief sought. *Cf. FPI Dev., Inc. v. Nakashima*, 282 Cal. Rptr. 508, 516 (Ct. App. 1991) (“The procedure for resolving a summary judgment motion presupposes that the pleadings are adequate to put in issue a cause of action or defense thereto.” (citation omitted)); *see also Hartford Fire Ins. Co. v. Evergreen Org., Inc.*, 410 F. Supp. 2d 180, 183-84 (S.D.N.Y. 2006) (“[S]ubjecting a party to the rules of the court presupposes the court’s power over it.” (footnoted citation omitted)). Because the Court cannot refuse to allow Attorney Springette to withdraw, it follows that the Court also cannot grant her leave to withdraw because the power to grant relief necessarily implies the power to deny it.

Yet, an even more straightforward reason exists that makes clear that an assistant attorney general does not need court approval to withdraw—because counsel of record is the Virgin Islands Department of Justice, not, in this case, Attorney Springette. *Cf. Carreno v. City of Newark*, 834 F. Supp. 2d 217, 226 (D.N.J. 2011) (“A municipality’s lawyers are usually considered a single office and legal unit. . . . This is similar to private clients and law firms, where the firm is counsel of record, not just the individual lawyers who may work on the case.”). When an attorney who is associated with or is a member of a law firm makes an appearance in a case, it is the law firm who appears as attorney of record for the party, not the individual attorney working on the case. *Cf. Roger C. Cramton, George M. Cohen, & Susan P. Koniak, Legal and Ethical Duties of Lawyers After Sarbanes-Oxley*, 49 Vill. L. Rev. 725, 750 (2004) (“Corporate clients who hire outside counsel usually understand that they are represented by the law firm, not any one individual lawyer within the firm.”). So too here. The Virgin Islands Department of Justice is not seeking

leave to withdraw as counsel for the Government. Rather, an individual attorney within the Department gave notice that her tenure would soon come to an end. Consequently, Attorney Springette's motion is not a true motion despite its title. Instead, Attorney Springette's motion is a notice of withdrawal. It will be construed as such.

This determination makes it necessary to address one final concern—that Attorney Springette did not designate substitute counsel in her “motion,” nor has substitute counsel appeared since Attorney Springette withdrew her representation over a year ago. Courts should not have to order the Virgin Islands Department of Justice to have counsel enter an appearance on behalf of the Government of the Virgin Islands in a civil case or on behalf of the People of the Virgin Islands in a criminal case. 3 V.I.C. § 114(a)(1), (2) and (3); *cf.* Super. Ct. R. 132 (“The Attorney General of the Virgin Islands, or an Assistant Attorney General, shall conduct all criminal proceedings on behalf of the Government of the Virgin Islands in the superior court.”). Here, because Attorney Springette's “motion” has not been ruled upon, the Government arguably could attribute its inaction to the fact that it is still awaiting a ruling on the motion. To avoid the potential for this issue to recur, the Court holds that assistant attorneys general withdrawing their representation shall designate substitute counsel in their notices of withdrawal.

Further, because the Court's decision may require a change to the Virgin Islands' rules of procedure, the Court will further direct that a copy of this Opinion and Order be forwarded to the Advisory Committee on Rules. *Accord Hall v. Hall*, 584 U.S. ___, ___; 2018 U.S. LEXIS 2062, *29 (Mar. 27, 2018) (“If . . . our holding in this case were to give rise to practical problems for district courts and litigants, the appropriate Federal Rules Advisory Committees would certainly remain free to take the matter up and recommend revisions accordingly.”); *see also People v. Hatcher*, SX-14-CR-131, ___ V.I. ___, ___, 2018 V.I. LEXIS 29, *11-12 (V.I. Super. Ct. Mar. 8, 2018) (alerting the clerk of court to consider revising standard court forms (citing *Tucker v. Resha*, 648 So. 2d 1187, 1190 (Fla. 1994)); *cf.* V.I. R. Civ. P. 6-5 (“No attorney may withdraw an appearance except with leave of court *after notice* to the attorney's client.” (emphasis added))).

Accordingly, for the reasons set forth above, it is hereby

ORDERED that the motion to withdraw filed by Ross N. Springette, Esq. on March 14, 2017 is CONSTRUED as a notice of withdrawal. It is further

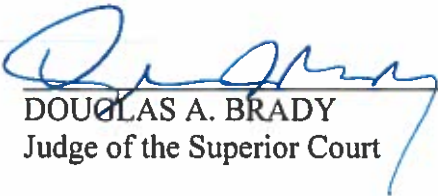
ORDERED that, within fourteen (14) days from the date of entry of this Memorandum Opinion and Order, Respondent Government of the Virgin Islands shall have counsel file a notice of appearance on its behalf in this matter. It is further

ORDERED that a copy of this Memorandum Opinion and Order be served on Attorney General Claude E. Walker, Esq., Kye Walker, Esq., and Larry Raymond-Roy, Esq., FORTHWITH, and that a copy be forwarded to the Advisory Committee on Rules.

Dated: April 9, 2018.

ATTEST:

ESTRELLA H. GEORGE
Clerk of the Court


DOUGLAS A. BRADY
Judge of the Superior Court

By: 

Court Clerk Supervisor
4/9/18