

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

**JAY T. WATSON,**

**PLAINTIFF,**

**v.**

**GOVERNMENT OF THE VIRGIN ISLANDS AND  
GOVERNOR KENNETH E. MAPP<sup>1</sup>,**

**DEFENDANT.**

**SX-12-CV-301**

**ACTION FOR DECLARATORY  
JUDGMENT AND INJUNCTIVE  
RELIEF**

**MEMORANDUM OPINION**

**THIS MATTER** came before the Court for review *sua sponte*.

**BACKGROUND**

In 1990, Act No. 5555 amended sections 123 and 124 of Title 3 of the Virgin Islands Code, and redesignated them as Sections 27g and 27h respectively, and placed the Narcotics Strike Force “under the exclusive jurisdiction, control, and direction of the Governor of the Virgin Islands.” Title 3 V.I.C. § 123(b). In 1999, Act No. 6306, amended Title 3, section 27g, and mandated that the budget for the Narcotics Strike Force “to be included within the Virgin Islands Police Department for budgetary purposes only.”

In 2008, Defendant Governor John P. deJongh, Jr. (hereinafter “Governor”) and Defendant Government of the Virgin Islands (hereinafter “GVI”) sought to repeal Title 3, sections 27g and 27h of the Virgin Islands Code, and to abolish the Virgin Islands Drug Enforcement Bureau (hereinafter “VIDEB”), formerly known as the Narcotics Strike Force. The Legislature of the Virgin Islands (hereinafter “Legislature”) never acted on Defendants’ proposal. In 2008 and 2009, the Legislature authorized the budget for the Virgin Islands Police Department without specifically identifying the

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<sup>1</sup> Although Plaintiff Jay T. Watson’s complaint originally named Governor John P. deJongh as a defendant in his official capacity, he is no longer in office. Pursuant to Superior Court Rule 8, the Court will amend the caption to reflect the succession of the Governor. Super. Ct. R. 8 (“The court may amend any process or pleading for any omission or defect therein”).

funding for the VIDEB. Defendants proceeded to close the VIDEB in St. Thomas and St. Croix in 2008 and 2009, respectively. As a result, Plaintiff Jay Watson (hereinafter "Plaintiff"), employed by VIDEB as a narcotics agent, was reassigned to the Virgin Islands Police Department.

In 2010, Act No. 7194, amended Title 3 and struck sections 27g and 27h in their entirety.

Moreover, Act No. 7194 added a new "chapter 42" whereby section 1216 provides that:

The V.I. Drug Enforcement Bureau heretofore existing within the Office of the Governor, is hereby renamed and continued within the executive branch of government as a semi-autonomous entity designated as the "Virgin Islands Bureau of Narcotic and Dangerous Drugs Control" (VIBNDDC), to be under the exclusive jurisdiction, control, and direction of the Virgin Islands Bureau of Narcotics and Dangerous Drugs Control Board. Title 3 V.I.C. § 1216.

Act No. 7194 included a reinstatement provision that required "[a]ll former non-agent employees of the [VIDEB] who were transferred or assigned to other territorial law enforcement and government agencies and who currently are working in other territorial law enforcement and government agencies must, unless they otherwise express a contrary intent pursuant to section 1235 of this chapter, be reinstated to the [VIBNDDC]." Title 3 V.I.C. § 1234. In 2010 and 2011, the Legislature similarly authorized the budget for the Virgin Islands Police Department without specifically identifying the funding for the VIDEB, but in 2012, \$250,000.00 in funding under the Virgin Islands Police Department was specifically identified for the "Narcotics Strike Force".<sup>2</sup>

Plaintiff was never reinstated to the VIBNDDC. On August 8, 2012, Plaintiff commenced a lawsuit against Defendants for declaratory judgment and injunctive relief. Plaintiff alleged that Defendants "intentionally violate[d] the law by not adhering to the dictates of Title 3 V.I.C. [§§] 27g and 27h and continues to violate the dictates of Act No. 7194." (Compl. ¶ 25) Plaintiff further alleged that:

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<sup>2</sup> The Court must note that, in 2012, neither the VIDEB nor the Narcotics Strike Force was in existence. Act No. 7194 renamed and continued the VIDEB "within the executive branch of the government as a semi-autonomous entity designated as the [VIBNDDC]." Title 3 V.I.C. § 1216. As to unexpended funds allotted to VIDEB, formerly known as Narcotics Strike Force, Act No. 7194 provides that "[a]ll unexpended funds from the budget allotment to the former [VIDEB] must be directed to and used by and for the [VIBNDDC]."

17. On September of 2008 Defendants... proceeded to close the St. Thomas Virgin Islands Drug Enforcement Bureau and began to transfer union and non-union employees to other government agencies, citing "the legislature did not fund the agency."
18. On September 2009 Defendants... proceeded to close the St. Croix office of the Virgin Islands Drug Enforcement Bureau in the same manner.
- ...
27. [Defendant Governor] did not, and does not have the legal authority to abolish any government entity and/or department that was created by statute.
28. [Defendant GVI] did not and does not have the legal authority to abolish any government entity and/or department that was created by statute.
29. Only the Legislature of the Virgin Islands has the legal authority to abolish a Virgin Islands government entity and/or department that was created by statute.
30. The Legislature of the USVI never reduced the scope, suspended, or abolished the Virgin Islands Drug Enforcement Bureau, formerly the Narcotics Strike Force.
31. The former Virgin Islands Drug Enforcement Bureau has been renamed and continued within the executive branch of government as a semi-autonomous entity designated as the Virgin Islands Bureau of Narcotics and Dangerous Drug Control.
32. Plaintiff, Jay Watson, who was never formerly transferred to any government entity and/or department, is and continues to be, a Narcotics Agent with the Virgin Islands Bureau of Narcotics and Dangerous Control. (Compl.)

In his prayer for relief, Plaintiff requested the Court to:

1. Declare that Defendant [Governor] did not, and does not have the legal authority to abolish any government entity and/or department that was created by statute.
2. Declare that the Defendant [GVI] did not and does not have the legal authority to abolish any government entity and/or department that was created by statute.
3. Declare that only the Legislature of the Virgin Islands has the legal authority to abolish a Virgin Islands government entity and/or department that was created by statute.
4. Declare that the Legislature of the USVI never reduced the scope, suspended, or abolished the Virgin Islands Drug Enforcement Bureau, formerly the Narcotics Strike Force.
5. Declare that the former Virgin Islands Drug Enforcement Bureau has been renamed and continued within the executive branch of government as a semi-autonomous entity designated as the Virgin Islands Bureau of Narcotics and Dangerous Drug Control.
6. Declare that Jay Watson, who was never formerly transferred to any government entity and/or department, is and continues to be, a Narcotics Agent with the Virgin Islands Bureau of Narcotics and Dangerous Control.
7. Declare that all former Virgin Islands Drug Enforcement Bureau employees are, and continue to remain, employees of the Virgin Islands Bureau of Narcotics and Dangerous Drug Control.
8. Declare that Title 3 VIC Act 7194 § 1234 is moot, due to the fact that both Agents and non-Agents were involuntarily transferred as a result of an unlawful act.
9. Order that (All) former Virgin Islands Drug Enforcement Bureau employees who were Involuntarily transferred after October 1, 2008 immediately be reinstated to their previously held positions in accordance with provisions of Act 7194 § 1235.
10. Order that (All) employee rights of the former Virgin Islands Drug Enforcement Bureau employees be reinstated immediately.
11. Order that Defendants...adhere to the laws as spelled out in Title 3 VIC.

12. Order that all former VIDEB Agents and Employees be restored back to their previous positions in accordance with Act 7194 § 1235.
13. Order that Defendants...cease and desist from all actions and practices which are inconsistent with, but not limited to funding of the agency in accordance with the Revised Organic Act of 1954 as amended, Title 3 VIC and any other applicable law.
14. Order that Defendants...cease and desist from continued violation of promulgated rules and regulations of the Division of Personnel as is applicable to former VIDEB employees and employees of the Virgin Islands Bureau of Narcotics and Dangerous Drug Control.
15. Order that these employees immediately and formally be placed under the jurisdiction of the Virgin Islands Bureau of Narcotics and Dangerous Drug Control with no change in compensation until such time as the governing board of the Virgin Islands Bureau of Narcotics and Dangerous Drug Control approve salaries for the agency.
16. Judgment against defendants for the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_00.00).
17. Costs and Attorney's fees.
18. Such other and further relief to which this Honorable Court deems the Plaintiff justly entitled. (Compl.)

On January 16, 2013, Defendants filed an answer to Plaintiff's complaint. Subsequently, parties engaged in discovery. On April 10, 2013, Plaintiff served separate requests for admission on Defendant Governor and Defendant GVI. Neither Defendant Governor nor Defendant GVI responded to Plaintiff's requests. On May 10, 2017, when Defendants failed to timely respond to Plaintiff's requests for admission, Plaintiff filed separate motions to deem facts admitted against Defendant Governor and Defendant GVI. Neither Defendant Governor nor Defendant GVI responded to Plaintiff's motions. In two separate orders entered on July 9, 2013 and August 12, 2013, the Court granted Plaintiff's motions against Defendant GVI and Defendant Governor, respectively, and deemed the matters contained in his requests conclusively established pursuant to Federal Rule of Civil Procedure 36.

On August 28, 2013, Plaintiff filed a motion for summary judgment and argued that he is entitled to judgment as a matter of law in light of the fact that that the matters contained in his requests for admissions against Defendants have been conclusively established. Defendants filed an opposition and Plaintiff filed a reply thereafter. On October 29, 2014, the Court entered a memorandum opinion and order whereby the Court denied Plaintiff's motion for summary judgment.



In response, Plaintiff filed a motion for reconsideration, which was subsequently denied by the Court.

This matter is currently referred to mediation before Magistrate Miguel Camacho. Upon reviewing the file, the Court believes that clarification of the Court's October 29, 2014 memorandum opinion and order would help move this matter forward.

### **DISCUSSION**

In its October 29, 2014 memorandum opinion and order, the Court noted that, with the matters contained in Plaintiff's requests for admission deemed admitted, there are no facts stated to the contrary. Thus, the Court found that Plaintiff met his burden of showing that there is no genuine issue of material fact. However, the Court found that Plaintiff is not entitled to judgment as a matter of law. Accordingly, the Court denied Plaintiff's motion for summary judgment.<sup>3</sup>

#### **A. Deemed Admissions pursuant to Federal Rule of Civil Procedure 36**

Under Federal Rule of Civil Procedure 36 (hereinafter "Rule 36"), a party may "serve on any other party a written request to admit, for purposes of the pending action only, the truth of any matters within the scope of Rule 26(b)(1)<sup>4</sup> relating to facts, the application of law to fact, or opinions

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<sup>3</sup> In *Watson v. Gov't of the V.I.*, SX-12-CV-301, 2014 V.I. LEXIS 103, \*6-11 (Super. Ct. Oct. 29, 2014), the Court stated: A motion for summary judgment shall be granted, "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a).<sup>1</sup> Once this showing has been made the non-moving party bears the burden of disproving the moving party's assertion that there is no genuine issue of material fact. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). The test to determine summary judgment is two-part: "[W]hether there is a genuine issue of material fact and, if not, whether the moving party is entitled to judgment as a matter of law." *Maduro v. American Airlines, Inc.*, No. 2007/029, 2008 V.I. Supreme LEXIS 24, [WL] \*3 (V.I. 2008). Plaintiff has overcome his burden of proving there is no genuine dispute as to any material fact, however, he has failed to prove he is entitled to judgment as a matter of law.

<sup>1</sup> The Federal Rules of Civil Procedure are made applicable to this Court through Rule 7 of the Rules of the Superior Court.

<sup>4</sup> Federal Rule of Civil Procedure 26(b)(1) provides:

*Scope in General.* Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

about either.” Fed. R. Civ. P. 36(a)(1) (footnote added). Rule 36 provides that, when requests for admission are served, “[a] matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney.” Fed. R. Civ. P. 36(a)(3). Under the language of Rule 36, a party’s failure to timely respond to the request for admissions results in the automatic admission of the matters requested. *Id.* “A matter admitted under this rule is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended.” Fed. R. Civ. P. 36(b).

While Rule 36 allows a party to request an admission of “the application of law to fact,” requests for purely legal conclusions are not permitted under Rule 36 and the Court finds such requests to be improper because it could lead to parties stipulating to the law. *See Matthew v. Herman*, 56 V.I. 674, 682 (V.I. 2012) (“parties cannot stipulate to the law, especially in a situation...where the decision may impact other pending or future cases”); *see also, Der Weer v. Hess Oil V.I. Corp.*, 2016 V.I. LEXIS 21, \*54 (“the parties cannot stipulate to the law, not explicitly by agreeing on the applicable law, or implicitly by not questioning what law applies”) (internal quotation marks and citations omitted); *see e.g., Benson Tower Condo. Owners Ass’n v. Victaulic Co.*, 105 F.Supp.3d 1184 (D. Ore. May 11, 2015) (collecting cases) (“[r]equests for purely legal conclusions... are generally not permitted [under Rule 36]”); *Stark-Romero v. AMTRAK Co.*, 275 F.D.R. 551, 554 (D.N.M. July 14, 2011) (collecting cases). For that same reasons, the Court also finds requests for admissions of interpretation of statute to be improper. *See Hansen v. Gov’t of the Virgin Islands*, 53 V.I. 58, 86 (Terr. Ct. Mar. 19, 2010) (“To the legislative department has been committed the duty of making laws; to the executive the duty of executing them; and to the judiciary, the duty of interpreting and applying them in cases properly before the courts.”). It is for the Court to determine what law is applicable and it is for the Court to interpret the law.

Here, there is no dispute that Plaintiff served Defendant Governor and Defendant GVI with separate requests for admission and that Defendants failed to serve a timely written answer or objection in response. Although Plaintiff subsequently filed motions to deem facts admitted against Defendant Governor and Defendant GVI, which the Court granted, that was not necessary. Under Rule 36, except for those requests that fall outside the scope of Rule 36(a)(1), matters contained in Plaintiff's requests for admissions were automatically deemed admitted. Fed. R. Civ. P. 36(a)(3). Thus, when the Court granted Plaintiff's motions to deem facts admitted against Defendant Governor and Defendant GVI, the Court should have specified in its orders, entered on July 9, 2013 and August 12, 2013, that only those requests that fall within the scope of Rule 36(a)(1) are deemed admitted and made a finding as to which requests fall within the scope of Rule 36(a)(1).

On April 10, 2013, Plaintiff propounded 33 requests for admission on Defendant Governor, of which 21 requests fall within the scope of Rule 36(a)(1), *to wit*: Requests #1-7, 12-15, 21-25, and 29-33.<sup>5</sup> On that same date, Plaintiff also propounded 33 requests for admission on Defendant GVI,

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<sup>5</sup> Plaintiff's requests for admission as to Defendant Governor:

1. Admit, or deny with specificity as is required by F.R.Civ. P. 36 that during the entire period from January 1, 2007 to Present that you were able to read, write, speak and understand the English language.
2. Admit, or deny with specificity as is required by F.R.Civ. P.36, that during the entire period from January 1, 2007 to Present that you were not adjudicated to be mentally incompetent, institutionalized for mental health treatment, or otherwise treated for any mental or emotional illness.
3. Admit or deny with specificity as is required by rule 36 of the Fed. RCP that the powers and duties of the Governor of the USVI are contained in section 11, of the Revised Organic Act of 1954.
4. Admit or deny with specificity as is required by rule 36 of the Fed. RCP that the powers and duties of the Legislature of the USVI are contained in section 5, of the Revised Organic Act of 1954.
5. Admit or deny with specificity as is required by rule 36 of the Fed. RCP that exhibit no. Watson-0009 is a true and accurate copy of the proposed Legislation sent by Defendant John P. De Jongh Jr. to then senate president Usie R. Richards along with a transmittal letter.
6. Admit or deny with specificity as is required by rule 36 of the Fed. RCP that exhibit no. Watson-00010 is a true and accurate copy of the proposed Legislation sent by Defendant John P. De Jongh Jr. to then Senate President Adlah Donastorg along with a transmittal letter.
7. Admit or deny with specificity as is required by rule 36 of the Fed. RCP that exhibit no. Watson-00012 is a true and accurate copy of the proposed Legislation sent by Defendant John P. De Jongh Jr. to then Senate President Ronald Russell along with a transmittal letter.
- ...
12. Admit or deny with specificity as is required by rule 36 of the Fed. RCP that on July 27, 2010 the Legislature passed Act 7194 which amended Title 3 VIC Chapter 1 27(g) & 27(h).
13. Admit or deny with specificity as is required by rule 36 of the Fed. RCP that on August 20, 2010, Defendant John P. De Jongh Jr. vetoed Act 7194.
14. Admit or deny with specificity as is required by rule 36 of the Fed. RCP that on September 20, 2010 the VI

of which 21 requests fall within the scope of Rule 36(a)(1), *to wit*: Requests #1-7, 12-15, 21-25, and 29-33.<sup>6</sup> Such requests were properly deemed admitted. However, the Court finds the remaining

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Legislature overrode Defendant John P. De Jongh Jr.'s veto of Act 7194.

15. Admit or deny with specificity as is required by rule 36 of the Fed. RCP that the word "abolished" and/or "repealed" does not appear anywhere in the written text of Act 7194.  
...
21. Admit or deny with specificity as is required by rule 36 of the Fed. RCP that the USWA was the collective bargaining organization representing agents I, II and of the V. I. Drug Enforcement Bureau, formerly the V.I. Narcotics Strike Force.
22. Admit or deny with specificity as is required by rule 36 of the Fed. RCP that the Narcotics Agents I, II and never decertified the USWA as their collective bargaining representative.
23. Admit or deny with specificity as is required by rule 36 of the Fed. RCP that Defendant John P. De Jongh Jr. never executed a Notice of Personnel Action transferring Jay Watson to the VI Police Department.
24. Admit or deny with specificity that exhibit no. Watson-00030 is a true and accurate copy of BR-09-0592, and is Legislative Counsel's Opinion on the Governor's Authority to disband the V.I. Drug Enforcement Bureau, formerly the Narcotics Strike Force, dated, June 1, 2010.
25. Admit or deny with specificity as is required by rule 36 of the Fed RCP that during a Legislative hearing for the Committee on Public Safety, Homeland Security, and Justice held in the Fritz E. Lawaetz Chamber on 6-11-10 that Attorney General Vincent Frazer was asked by Committee Chairperson Senator Samuel Sanes while under oath "What is your opinion in terms of the our Legal uh Counsel opinion that there is in fact a legal Drug Enforcement Agency still in play, in place." To which the Attorney General Vincent Frazer replied "Theoretically speaking, Legal Counsel's opinion is correct or I agree with."  
...
29. Admit or deny with specificity as is required by rule 36 of the Fed. RCP that Defendant John P. De Jongh Jr. and/or his subordinates with authority to do so, ordered that all the equipment of Virgin Islands Drug Enforcement Bureau be inventoried and transferred to the Virgin Islands Police Department and other departments within the Executive Branch of the Virgin Islands Government.
30. Admit or deny with specificity as is required by rule 36 of the Fed. RCP that all transferred VIDEB employee's retirement benefits, leave accrued, years of Government service, health insurance, and other benefits of employees of the Virgin Islands Drug Enforcement Bureau continued and remained unimpaired upon commencement of their service in other branches, agencies, and instrumentalities, and that they were transferred within the Virgin Islands Government.
31. Admit or deny with specificity as is required by rule 36 of the Fed. RCP that all funds appropriated to the Virgin Islands Drug Enforcement Bureau that were unexpended were transferred to the Virgin Islands Police Department except for monies appropriated for salaries of employees of the Virgin Islands Drug Enforcement Bureau, because the salaries followed those employees to the branches, agencies, and instrumentalities the employees were transferred to.
32. Admit or deny with specificity as is required by rule 36 of the Fed. RCP that Defendant John P. De Jongh Jr. and/or its subordinates with authority to do so effectuated the orderly dismantling of the Virgin Islands Drug Enforcement Bureau.
33. Admit or deny with specificity as is required by rule 36 of the Fed. RCP that all contracts of the Virgin Islands Drug Enforcement Bureau were transferred to the Virgin Islands Police Department and continued to be governed by their expressed terms and conditions.

<sup>6</sup> Plaintiff's requests for admission as to Defendant GVI:

1. Admit, or deny with specificity as is required by F.R.Civ. P. 36 that during the entire period from January 1, 2007 to Present that you were able to read, write, speak and understand the English language.
2. Admit, or deny with specificity as is required by F.R.Civ. P.36, that during the entire period from January 1, 2007 to Present that you were not adjudicated to be mentally incompetent, institutionalized for mental health treatment, or otherwise treated for any mental or emotional illness.
3. Admit or deny with specificity as is required by rule 36 of the Fed. RCP that the powers and duties of the Governor of the USVI are contained in section 11, of the Revised Organic Act of 1954.
4. Admit or deny with specificity as is required by rule 36 of the Fed. RCP that the powers and duties of the Legislature of the USVI are contained in section 5, of the Revised Organic Act of 1954.



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5. Admit or deny with specificity as is required by rule 36 of the Fed. RCP that exhibit no. Watson-0009 is a true and accurate copy of the proposed Legislation sent by Defendant John P. De Jongh Jr. to then senate president Usie R. Richards along with a transmittal letter.
  6. Admit or deny with specificity as is required by rule 36 of the Fed. RCP that exhibit no. Watson-00010 is a true and accurate copy of the proposed Legislation sent by Defendant John P. De Jongh Jr. to then Senate President Adlah Donastorg along with a transmittal letter.
  7. Admit or deny with specificity as is required by rule 36 of the Fed. RCP that exhibit no. Watson-00011 is a true and accurate copy of the proposed Legislation sent by Defendant John P. De Jongh Jr. to then Senate President Ronald Russell along with a transmittal letter.
  - ...
  12. Admit or deny with specificity as is required by rule 36 of the Fed. RCP that on July 27, 2010 the Legislature passed Act 7194 which amended Title 3 VIC Chapter 1.
  13. Admit or deny with specificity as is required by rule 36 of the Fed. RCP that on August 20, 2010, John P. De Jongh Jr., Governor of the US Virgin Islands, vetoed Act 7194.
  14. Admit or deny with specificity as is required by rule 36 of the Fed. RCP that on September 20, 2010 the VI Legislature overrode Governor John P. DeJongh Jr's, Veto of Act 7194.
  15. Admit or deny with specificity as is required by rule 36 of the Fed. RCP that the word "abolished" and/or "repealed" does not appear anywhere in the written text of Act 7194.
  - ...
  21. Admit or deny with specificity as is required by rule 36 of the Fed. RCP that the USWA was the collective bargaining organization representing agents I, II and III of the V. L Drug Enforcement Bureau, formerly the VI Narcotics Strike Force,
  22. Admit or deny with specificity as is required by rule 36 of the Fed. RCP that the Narcotics Agents I, II and III never decertified the USWA as their collective bargaining representative.
  23. Admit or deny with specificity as is required by rule 36 of the Fed. RCP that Defendant Government of the USVI never executed a Notice of Personnel Action transferring Jay Watson to the VI Police Department.
  24. Admit or deny with specificity that exhibit no. Watson-00030 is a true and accurate copy of BR-09-0592, and is Legislative Counsel's opinion on the Governor's Authority to disband the V.I. Drug Enforcement Bureau, formerly the Narcotics Strike Force, dated, June 1, 2010.
  25. Admit or deny with specificity as is required by rule 36 of the Fed RCP that during a Legislative hearing for the Committee on Public Safety, Homeland Security, and Justice held in the Fritz E. Lawaetz Chamber on 6-11-10 that Attorney General Vincent Frazer was asked by Committee Chairperson Senator Samuel Sanes while under oath "What is your opinion in terms of the our Legal uh Counsel opinion that there is in fact a legal Drug Enforcement Agency still in play, in place." To which the Attorney General Vincent Frazer replied "Theoretically speaking, Legal Counsel's opinion is correct or I agree with."
  - ...
  29. Admit or deny with specificity as is required by rule 36 of the Fed. RCP that Defendant Government of the USVI through its agents and/or employees under its authority ordered that all the equipment of Virgin Islands Drug Enforcement Bureau be inventoried and transferred to the Virgin Islands Police Department and other departments within the Executive Branch of the Virgin Islands Government.
  30. Admit or deny with specificity as is required by rule 36 of the Fed. RCP that all transferred VIDEB employee's retirement benefits, leave accrued, years of Government service, health insurance, and other benefits of employees of the Virgin Islands Drug Enforcement Bureau continued and remained unimpaired upon commencement of their service in other branches, agencies, and instrumentalities, and that they were transferred within the Virgin Islands Government.
  31. Admit or deny with specificity as is required by rule 36 of the Fed. RCP that all funds appropriated to the Virgin Islands Drug Enforcement Bureau that were unexpended were transferred to the Virgin Islands Police Department except for monies appropriated for salaries of employees of the Virgin Islands Drug Enforcement Bureau, because the salaries followed those employees to the branches, agencies, and instrumentalities the employees were transferred to.
  32. Admit or deny with specificity as is required by rule 36 of the Fed. RCP that Defendant Government of the USVI, through its agents and/or employees under its authority, effectuated the orderly dismantling of the Virgin Islands Drug Enforcement Bureau.
  33. Admit or deny with specificity as is required by rule 36 of the Fed. RCP that all contracts of the Virgin Islands Drug Enforcement Bureau were transferred to the Virgin Islands Police Department and continued to be governed by their expressed terms and conditions.

requests for admission to fall outside the scope of Rule 36(a)(1), *to wit*: Requests #8-11, 16-20, and 26-28 (Defendant Governor) and Requests #8-11, 16-20, and 26-28 (Defendant GVI). The Court will discuss each of these remaining requests in turn.<sup>7</sup>

Requests #8

Requests #8 state, “Admit or deny with specificity as is required by rule 36 of the Fed. RCP that Defendant John P. De Jongh Jr. failed to submit a proposed budget for the Virgin Islands Drug Enforcement Bureau to the Virgin Islands Legislature in 2008 and 2009 for fiscal years 2009 and 2010 as is required by the Revised Organic Act of 1954 as amended” (Defendant Governor) and “Admit or deny with specificity as is required by rule 36 of the Fed. RCP that the Government of the Virgin Islands (Executive Branch) failed to submit a proposed budget for the Virgin Islands Drug Enforcement Bureau to the Virgin Islands Legislature in 2008 and 2009 for fiscal years 2009 and 2010 as is required by the Revised Organic Act of 1954 as amended” (Defendant GVI).

Whether Defendant Governor and Defendant GVI submitted a proposed budget for VIDEB in 2008 and 2009 is certainly a factual issue. However, whether the Revised Organic Act of 1954 as amended (hereinafter “ROA”) requires Defendant Governor and Defendant GVI to submit a proposed budget for VIDEB annually is purely a question of law. Having this matter admitted—that the ROA requires Defendant Governor and Defendant GVI to submit a proposed budget for VIDEB annually—pursuant to Rule 36 is essentially letting parties stipulate to the interpretation of the ROA. As such, the latter part of Requests #8 is outside the scope of Rule 36(a)(1) and were not deemed admitted. The Court will make its own determination as to whether the ROA requires Defendant Governor and Defendant GVI to submit a proposed budget for VIDEB annually. On the other hand, the first part of Requests #8 is within the scope of Rule 36(a)(1) and thus, it was deemed admitted

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<sup>7</sup> Given the similarity between the requests for admissions served on Defendant Governor and Defendant GVI, the Court will discuss them together.

that Defendant Governor and Defendant GVI failed to submit a proposed budget for VIDEB in 2008 and 2009.

Requests #9

Requests #9 state, “Admit or deny with specificity as is required by rule 36 of the Fed. RCP that the Revised Organic Act of 1954 does not give Defendant John P. De Jongh Jr. the authority to abolish or terminate the effective operation of any gov’t department or agency created by the Legislation or by Statue without the prior consent and approval of the Virgin Islands Legislature” (Defendant Governor) and “Admit or deny with specificity as is required by rule 36 of the Fed. RCP that the Revised Organic Act of 1954 does not give Defendant Government of the USVI (Executive Branch) the authority to abolish or terminate the effective operation of any gov’t department or agency created by the Legislation or by Statue without the prior consent and approval of the Virgin Islands Legislature” (Defendant GVI).

Whether the ROA gives Defendant Governor and Defendant GVI authority to abolish or terminate the effective operation of any government department or agency created by legislation or by statute without the prior consent and approval of the Legislature is purely a question of law. Having this matter admitted pursuant to Rule 36 is essentially letting parties stipulate to the interpretation of the ROA. As such, Requests #9 are outside the scope of Rule 36(a)(1) and were not deemed admitted. The Court will make its own determination as to whether the ROA gives Defendant Governor and Defendant GVI authority to abolish or terminate the effective operation of any government department or agency created by legislation or by statute without the prior consent and approval of the Legislature.

Requests #10

Requests #10 state, “Admit or deny with specificity as is required by rule 36 of the Fed. RCP that the Revised Organic Act of 1954 only authorizes the Legislature or Legislative Branch to create

or abolish Government departments or Agencies created by statute” (Defendant Governor) and “Admit or deny with specificity as is required by rule 36 of the Fed. RCP that the Revised Organic Act of 1954 only authorizes the Legislature or Legislative Branch to create or abolish Government departments or Agencies created by statute” (Defendant GVI).

Whether the ROA only authorizes the Legislature or Legislative Branch to create or abolish Government departments or agencies created by statute is purely a question of law. Having this matter admitted pursuant to Rule 36 is essentially letting parties stipulate to the interpretation of the ROA. As such, Requests #10 are outside the scope of Rule 36(a)(1) and were not deemed admitted. The Court will make its own determination as to whether the ROA only authorizes the Legislature or Legislative Branch to create or abolish Government departments or agencies created by statute.

Requests #11

Requests #11 state, “Admit or deny with specificity as is required by rule 36 of the Fed. RCP that the Defendant John P. De Jongh Jr. did not receive authorization or approval from the Legislature or the Legislative Branch to abolish the VI Drug Enforcement Bureau or the VI Waste Management Authority” (Defendant Governor) and “Admit or deny with specificity as is required by rule 36 of the Fed. RCP that Defendant Government of the USVI (Executive Branch) did not receive authorization or approval from the Legislature or the Legislative Branch to abolish the VI Drug Enforcement Bureau or the VI Waste Management Authority” (Defendant GVI).

Whether Defendant Governor and Defendant GVI received authorization or approval from the Legislature or the Legislative Branch to abolish VIDEB or the Virgin Islands Waste Management Authority is certainly a factual issue, but it assumes that Legislative authorization or approval was required. Whether Legislative authorization or approval was required for Defendant Governor and Defendant GVI to abolish the VIDEB and the Virgin Island Waste Management Authority is purely a question of law. Having this matter admitted—that Defendant Governor and Defendant GVI



abolished the VIDEB and the Virgin Island Waste Management Authority without the authorization or approval of the Legislature—pursuant to Rule 36 is essentially letting parties stipulate to the law. As such, Requests #11 are outside the scope of Rule 36(a)(1) and were not deemed admitted. The Court will make its own determination as to whether Legislative authorization or approval was required for Defendant Governor and Defendant GVI to abolish the VIDEB and the Virgin Island Waste Management Authority.

Requests #16-17

Requests #16 state, “Admit or deny with specificity as is required by rule 36 of the Fed. RCP that Defendant John P. De Jongh Jr. has never received any Legislation approved by the Legislature to abolish the VI Drug Enforcement Bureau” (Defendant Governor) “Admit or deny with specificity as is required by rule 36 of the Fed. RCP that Defendant Government of the USVI (Executive Branch) has never received any Legislation approved by the Legislature to abolish the VI Drug Enforcement Bureau” (Defendant GVI).

Requests #17 state, “Admit or deny with specificity as is required by rule 36 of the Fed. RCP that defendant John P. De Jongh Jr. has never received any Legislation approved by the Legislature to abolish the VI Waste Management Authority” (Defendant Governor) and “Admit or deny with specificity as is required by rule 36 of the Fed. RCP that Defendant Government of the USVI (Executive Branch) has never received any Legislation approved by the Legislature to abolish the VI Waste Management Authority” (Defendant GVI).

Whether Defendant Governor and Defendant GVI received any legislation approved by the Legislature to abolish the VIDEB and the Virgin Island Waste Management Authority is certainly a factual issue, but it assumes that Legislative approval was required. As explained above for Requests #11, whether Legislative approval was required for Defendant Governor and Defendant GVI to abolish the VIDEB and the Virgin Island Waste Management Authority is purely a question

of law. As such, Requests #16 and #17 are outside the scope of Rule 36(a)(1) and were not deemed admitted. The Court will make its own determination as to whether Legislative approval was required for Defendant Governor and Defendant GVI to abolish the VIDEB and the Virgin Island Waste Management Authority.

Requests #18

Requests #18 state, “Admit or deny with specificity as is required by rule 36 of the Fed. RCP that Defendant John P. De Jongh Jr. was aware that Legislative approval was required before he could implement any of the terms of his proposed Legislation in exhibits no. Watson-0009, Watson-00010 and Watson-00012” (Defendant Governor) and “Admit or deny with specificity as is required by rule 36 of the Fed. RCP that Defendant Government of the USVI (Executive Branch) was aware that Legislative approval was required before it could implement any of the terms of the Governor's proposed Legislation in exhibits no. Watson-0009, Watson-00010 and Watson-00012” (Defendant GVI).

Whether Defendant Governor and Defendant GVI was aware that Legislative approval was required before they could implement any of the terms of Defendant Governor's proposed legislation is certainly a factual issue, but it assumes that Legislative approval was required. Whether Legislative approval was required before Defendant Governor and Defendant GVI could implement Defendant Governor's proposed legislation is purely a question of law. Having this matter admitted—that Defendant Governor and Defendant GVI was aware that Legislative approval was required before they could implement any of the terms of Defendant Governor's proposed legislation—pursuant to Rule 36 is essentially letting parties stipulate to the law. As such, Requests #18 are outside the scope of Rule 36(a)(1) and were not deemed admitted. The Court will make its own determination as to whether Legislative approval was required before Defendant Governor and Defendant GVI could implement any of the terms of Defendant Governor's proposed legislation.

Requests #19

Requests #19 state, “Admit or deny with specificity as is required by rule 36 that Defendant John P. De Jongh Jr. implemented sections 2-6 of Defendant Governor John P. DeJongh Jr.'s proposed Legislation in exhibit no. Watson-0009, knowing he did not have Legislative approval to do so” (Defendant Governor) and “Admit or deny with specificity as is required by rule 36 that Defendant Government of the USVI (Executive Branch) implemented sections 2-6 of Governor John P. DeJorigh Jr.'s proposed Legislation in exhibit no. Watson-0009, knowing it did not have Legislative approval to do so” (Defendant GVI).

Whether Defendant Governor and Defendant GVI knew that they did not have Legislative approval when they implemented sections 2-6 of Defendant Governor's proposed legislation is certainly a factual issue, but it assumes that Legislative approval was required. As noted above for Requests #18, whether Legislative approval was required before Defendant Governor and Defendant GVI could implement any of the terms of Defendant Governor's proposed legislation is purely a question of law. As such, Requests #19 are outside the scope of Rule 36(a)(1) and were not deemed admitted. The Court will make its own determination as to whether Legislative approval was required before Defendant Governor and Defendant GVI could implement sections 2-6 of Defendant Governor's proposed legislation.

Requests #20

Requests #20 state, “Admit or deny with specificity as is required by rule 36 of the Fed. RCP that Defendant John P. De Jongh Jr. was aware that by implementing sections 2-6 of Defendant John P. De Jongh Jr.'s proposed Legislation they were violating title 3 VIC Chapter 1 Section 27(g) and 27(h) which was the statute in full effect in 2009” (Defendant Governor) and “Admit or deny with specificity as is required by rule 36 of the Fed. RCP that Defendant John P. De Jongh Jr. and Defendant Government of the USVI (Executive Branch) knew that by implementing sections 2-6 of

Defendant John P. De Jongh Jr's proposed Legislation they were violating title 3 VIC Chapter 1 Section 27g and 27h which was the statute in full effect in 2009" (Defendant GVI).

Whether Defendant Governor and Defendant GVI's actions—namely, the implementation of sections 2-6 of Defendant Governor's proposed legislation—violated Title 3, sections 27g and 27h of the Virgin Islands Code<sup>8</sup> is purely a question of law. Having this matter admitted pursuant to Rule 36 is essentially letting parties stipulate to the interpretation of Title 3, sections 27g and 27h of the Virgin Islands Code. As such, Requests #20 are outside the scope of Rule 36(a)(1) and were not deemed admitted. The Court will make its own determination as to whether the implementation of sections 2-6 of Defendant Governor's proposed legislation violated Title 3, sections 27g and 27h of the Virgin Islands Code.

Requests #26 and #27

Requests #26 state, "Admit or deny with specificity as is required by rule 36 of the Fed. RCP that in 2008 Defendant John P. De Jongh Jr. ordered the closure and dismantling of the Virgin Islands Drug Enforcement Bureau St. Thomas office without the approval of the VI. Legislature" (Defendant Governor) and "Admit or deny with specificity as is required by rule 36 of the Fed. RCP that in 2008 Defendant Government of the USVI (Executive Branch) carried out the closure and dismantling of the Virgin Islands Drug Enforcement Bureau St. Thomas office without the approval of the V.I. Legislature" (Defendant GVI).

Requests #27 state, "Admit or deny with specificity as is required by rule 36 of the Fed. RCP that in 2009 Defendant John P. De Jongh Jr. ordered the closure and dismantling of the Virgin Islands Drug Enforcement Bureau St. Croix office without the approval of the VI Legislature" (Defendant Governor) and "Admit or deny with specificity as is required by rule 36 of the Fed. RCP that in 2009 Defendant Government of the USVI (Executive Branch) carried out the closure and

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<sup>8</sup> Title 3, sections 27g and 2h of the Virgin Islands Code were in effect when the VIDEB in St. Thomas and the VIDEB in St. Croix was closed in 2008 and 2009, respectively.



dismantling of the Virgin Islands Drug Enforcement Bureau St. Croix office without the approval of the V.I. Legislature” (Defendant GVI).

Whether Defendant Governor and Defendant GVI had the approval of the Legislature when they ordered the closure and dismantling of the VIDEB in St. Thomas and St. Croix is certainly a factual issue, but it assumes that Legislative approval was required. Whether Legislative approval was required for Defendant Governor and Defendant GVI to order the closure and dismantling of the VIDEB in St. Thomas and St. Croix is purely a question of law. Having this matter admitted—that Defendant Governor and Defendant GVI ordered the closure and dismantling of the VIDEB in St. Thomas and St. Croix without the approval of the Legislature—pursuant to Rule 36 is essentially letting parties stipulate to the law. As such, Requests #26 and #27 are outside the scope of Rule 36(a)(1) and were not deemed admitted. The Court will make its own determination as to whether Legislative approval was required for Defendant Governor and Defendant GVI to order the closure and dismantling of the VIDEB in St. Thomas and St. Croix.

Requests #28

Requests #28 state, “Admit or deny with specificity as is required by rule 36 of the Fed. RCP that Defendant John P. De Jongh Jr. executed Notice of Personnel Action transferring Joseph Angol, Walter Freeman, Dwight Griffin, Rosanna JnBaptiste, Rosemary Moscia, Javier Estrill and Hildegrade McFarlande to other departments within the Executive Branch of government without Legislative approval” (Defendant Governor) and “Admit or deny with specificity as is required by rule 36 of the Fed. RCP that Defendant Government of the USVI (Executive Branch) executed Notice of Personnel Action transferring Joseph Angol, Walter Freeman, Dwight Griffin, Rosanna JnBaptiste, Rosemary Moscia, Javier Estrill and Hildegrade McFarland to other departments within the Executive Branch of government without Legislative approval” (Defendant GVI).

Whether Defendant Governor and Defendant GVI had the approval of the Legislature when they transferred the aforementioned individuals to other departments within the Executive Branch is certainly a factual issue, but it assumes that Legislative approval was required. Whether Legislative approval was required for Defendant Governor and Defendant GVI to transfer the aforementioned individuals to other departments within the Executive Branch is purely a question of law. Having this matter admitted—that Defendant Governor and Defendant GVI transferred the aforementioned individuals to other departments within the Executive Branch without the approval of the Legislature—pursuant to Rule 36 is essentially letting parties stipulate to the law. As such, Requests #28 are outside the scope of Rule 36(a)(1) and were not deemed admitted. The Court will make its own determination as to whether Legislative approval was required for Defendant Governor and Defendant GVI to make said transfers.

Based on the foregoing, Plaintiff's Requests #8-11, 16-20, 26-28, and part of Requests #8, fall outside the scope of Rule 36(a)(1) and were not deemed admitted. The Court hereby clarifies its orders granting Plaintiff's motions to deem facts admitted against Defendant Governor and Defendant GVI, dated July 9, 2013 and August 12, 2013, that only those requests that fall within the scope of Rule 36(a)(1) were deemed admitted, *to wit*: Requests #1-7, 12-15, 21-25, and 29-33 and part of Requests #8.<sup>9</sup> The remaining requests, *to wit*: Requests #8-11, 16-20, 26-28, and part of Requests #8,<sup>10</sup> fall outside the scope of Rule 36(a)(1) and were not deemed admitted. Despite the fact that the Court did not explicitly explain that Requests #8-11, 16-20, 26-28, and part of Requests #8 were not deemed admitted, the Court did not abdicate its duty to determine the applicable law and to interpret the law. In its October 29, 2014 memorandum opinion and order, the Court denied Plaintiff's motion for summary judgment based on its own interpretation of the ROA and the Virgin Islands Code.

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<sup>9</sup> It was deemed admitted that Defendant Governor and Defendant GVI failed to submit a proposed budget for VIDEB in 2008 and 2009.

<sup>10</sup> It was not deemed admitted that the ROA requires Defendant Governor and Defendant GVI to submit a proposed budget for VIDEB annually.

**B. October 29, 2014 Memorandum Opinion and Order**

In its October 29, 2014 memorandum opinion and order, the Court noted two legal issues central to this matter: (1) whether Defendants violated the Revised Organic Acts and Title 3 of the Virgin Islands Code when they closed the VIDEB; and (2) whether Defendants' failure to transfer Plaintiff and former VIDEB back to VIBNDDC is a violation of Title 3 of the Virgin Islands Code. *Watson*, 2014 V.I. LEXIS 103 at \*6. The Court found that Defendants' closure of the VIDEB was not an abuse of power under the Revised Organic Act or the Virgin Islands Code. The Court explained:

**A. Defendants' Closure of the Drug Enforcement Bureau Was Not an Abuse of Power under the Revised Organic Act or Virgin Islands Code**

Section 11 of the Revised Organic Act of 1954 gives the Governor "general supervision and control of all the departments, bureaus, agencies, and other instrumentalities of the executive branch of the government of the Virgin Islands." Section 11 also states that the Governor "shall be responsible for the faithful execution of the laws of the Virgin Islands." This responsibility implies that the Governor must abide by the laws enacted by the Legislative Branch. See *Felix v. Gov't of the V.I.*, 3 V.I. 399 (D.V.I. 1958). As long as the Governor observes the laws and acts within the limits of powers conferred on him, his actions in respect of discretionary and political power are not reviewable by the courts. *Id.* at 406-08.

To support his argument that Defendants illegally closed the Drug Enforcement Bureau, Plaintiff refers to now repealed Title 3, Section 27g(k) of the Virgin Islands Code: "The budget for the Strike Force shall be included in the budget of the Governor for each fiscal year," Former Section 27g(l) goes on to say that "[a]ll funds appropriated for drug and narcotics enforcement and for other drug enforcement activities shall be appropriated to the Office of the Governor." Plaintiff argues that both of these sections, which were in effect when the Drug Enforcement Bureau was closed by Defendants, required Defendants to fund the needs of all statutorily mandated entities even in the absence of a specific line item appropriation for those entities. This argument, however, is erroneous. There is nothing in the plain language of these sections that directed Defendants to perform any specific action with the money appropriated to them by the Legislature.<sup>4</sup> Section 27g(k) merely mandated that the Governor include the Drug Enforcement Bureau budget within his proposed budget, while Section 27g(l) only specified where money appropriated for drug and narcotics enforcement should go. Neither section directed what the Governor must do with the money appropriated by the Legislature or what he should do if the Legislature failed to appropriate funds. In fact, contrary to Plaintiff's argument, former Section 27g(b) put the Drug Enforcement Bureau under the exclusive jurisdiction, control, and direction of the Governor. This meant that the Governor had the discretionary authority to transfer Drug Enforcement Bureau employees to other government agencies due to a lack of funding.

The details of the executive budget are spelled out in Title 2 of the Virgin Islands Code. Title 2, Section 19 of the Code states:

It is the purpose of this act to establish a comprehensive system for program and financial management which furthers the capacity of the Governor and Legislature to plan and finance the services which they determine the Government of the United States Virgin Islands will provide for its citizens.

Accordingly, under Section 19, the Governor and Legislature are to work together to plan and finance government services. It is the responsibility of the Governor to direct the preparation and administration of the budget for the Territory. V.I. Code Ann. tit. 2, § 20 (1970). Section 9(c) of the Revised Organic Act of 1954 provides that the Governor's budget "shall be the basis of the appropriation bills for the ensuing fiscal year." To that end, once the budget has been prepared, the Legislature is responsible for considering the Governor's recommendations and adopting those it deems appropriate. 2 V.I.C. §§21 (1)-(2). This means the Legislature has the final say concerning which services receive funding.<sup>5</sup>

The facts indicate that Defendants "failed to submit a proposed budget for the Virgin Islands Drug Enforcement Bureau to the Virgin Islands Legislature in 2008 and 2009 for fiscal years 2009 and 2010" (Request for Admissions #8). Plaintiff is correct that this means that the Governor failed to follow former Section 27g(k).<sup>11</sup> However, this fact still does not support his assertion that Defendants illegally closed the Drug Enforcement Bureau. "The Organic Act places the purse strings of government finances in the hands of the Legislature." *Chiang v. Turnbull*, 43 V.I. 49, 63 (Terr. Ct. 2000). In addition, as stated above, the Legislature has the final say concerning which government programs and services receive funding. Thus, the Legislature always had the power to appropriate funds to the Drug Enforcement Bureau, regardless of whether a budget for the Drug Enforcement Bureau was included in the proposed budget of the Governor. According to the facts deemed admitted and exhibits provided by Plaintiff, the Legislature did not appropriate funds to the Drug Enforcement Bureau. If Plaintiff had provided facts indicating that Defendants illegally withheld money appropriated to the Drug Enforcement Bureau, such facts would have demonstrated a clear abuse of power by the Governor. In this case, however, because the facts show that the Legislature did not appropriate funds to the Drug Enforcement Bureau, the Defendants did not exceed their statutory authority when they used their discretion to transfer employees from an executive agency that had not received funding from the Legislature to other government agencies. *Watson*, 2014 V.I. LEXIS 103 at \*6-11.

<sup>4</sup> In interpreting statutory texts courts use the ordinary meaning of terms unless context requires a different result." *Gonzales v. Carhart*, 550 U.S. 124, 152, 127 S. Ct. 1610, 167 L. Ed. 2d 480 (2007).

<sup>5</sup> Title 2, Section 25 of the Virgin Islands Code provides further support for this statement. Section 25 reads: The Legislature shall consider the Governor's proposed comprehensive program and financial plan;

<sup>11</sup> The Court misspoke in its October 29, 2014 memorandum opinion and order when it stated that:

The facts indicate that Defendants "failed to submit a proposed budget for the Virgin Islands Drug Enforcement Bureau to the Virgin Islands Legislature in 2008 and 2009 for fiscal years 2009 and 2010" (Request for Admissions #8). Plaintiff is correct that this means that the Governor failed to follow former Section 27g(k).

As indicated above, in his Requests #8, Plaintiff asked Defendant Governor and Defendant GVI to admit that they failed to submit a proposed budget for the VIDEB *as required by the ROA*. Plaintiff never asked Defendant Governor and Defendant GVI to admit that Title 3, section 27g(k) required Governor to submit a proposed budget for the VIDEB. Nevertheless, the Court's analysis was correct.



*evaluate alternatives to the Governor's recommendations; and determine the comprehensive program and financial plan to support the services to be provided the citizens of the Virgin Islands.*" (emphasis added).

The Court also found that Chapter 42 of Title 3 of the Virgin Islands Code does not require Defendants to transfer former VIDEB narcotics agents to the renamed VIBNDDC. The Court explained:

**B. Chapter 42 of Title 3 of the Virgin Islands Code Does Not Require Defendants to Transfer Former Drug Enforcement Bureau Narcotics Agents to the Renamed Bureau of Narcotics**

In his Motion for Summary Judgment, Plaintiff asks this Court to declare that he is and continues to be a Narcotics Agent within the Bureau of Narcotics. According to Plaintiff, Act 7194 required that all drug enforcement agents who were reassigned after the closure of the Drug Enforcement Bureau be returned to the newly formed Bureau of Narcotics. Act 7194 amended Title 3 of the Virgin Islands Code by striking Sections 27g and 27h in their entirety and adding a new Chapter 42, which includes Sections 1214-35. Section 1234(a) reads as follows:

All former non-agent employees of the Virgin Islands Drug Enforcement Bureau who were transferred or assigned to other territorial law enforcement and government agencies and who currently are working in other territorial law enforcement and government agencies must, unless they otherwise express a contrary intent pursuant to section 1235 of this chapter, be reinstated into the Virgin Islands Bureau of Narcotics and Dangerous Drugs Control (emphasis added).

Defendants argue that Plaintiff's job classification as Narcotics Agent removes him from the "reinstatement" provision of Section 1234(a).

Section 1215(a)(1) defines "agents" as "members of the Virgin Islands Bureau of Narcotics and Dangerous Drugs Control." This definition mirrors the definition used for "agent" under former Section 27g. A further reading of Chapter 42 indicates that "agents" or "members" of the Bureau of Narcotics are essentially law-enforcement officers. For example, Section 1218(f) reads "[i]n addition to the functions specified in this section, the members of the Bureau shall have the same law enforcement powers as police officers of the Virgin Islands Police Department including, but not limited to, peace officers status pursuant to title 5 V.I.C., 3561." It is clear that the Legislature's intent was to leave employees classified as "agents" out of the reinstatement provision of Section 1234(a) and only make this option applicable to former staff of the Drug Enforcement Bureau.

Plaintiff refers to Section 1220(a) to support his assertion that members of the Drug Enforcement Bureau were automatically members of the new Bureau of Narcotics, Section 1220(a) states "[a]ll members of the Bureau, including those on loan from other local government departments or agencies, are accountable to and under the direct control and supervision of the Director." Section 1215(2) defines "Bureau" as "the Virgin Islands Bureau of Narcotics and Dangerous Drug Control." Section 1220(a) makes no mention of members of the former Drug Enforcement Bureau. Section 1220(a) speaks solely to current members of the Bureau of Narcotics and those on loan from other agencies. It cannot be read to include

former members of the Drug Enforcement Bureau when section 1234(a) specifically addresses the issue of reinstatement of former employees from the Drug Enforcement Bureau without including former "agents" or "members" as persons required to be reinstated into the Bureau of Narcotics.

Another important point to note about Act 7194 and the addition of Chapter 42 is that it not only renamed the Drug Enforcement Bureau, but it also continued the agency as a semi-autonomous entity within the executive branch, removing it from the exclusive jurisdiction, control, direction of the Governor and placing it into the hands of the Virgin Islands Bureau of Narcotics and Dangerous Drugs Control Board (hereinafter "Board"). Assuming *arguendo*, Plaintiff's argument was correct, it would have been the responsibility of the Board to reinstate him as a Narcotics Agent with the new agency, not the responsibility of the Governor or the Executive branch. *Watson*, 2014 V.I. LEXIS 103 at \*11-14.

Thus, the Court found that Plaintiff was not entitled to judgment as a matter of law based on the underlying facts and denied Plaintiff's motion for summary judgment.

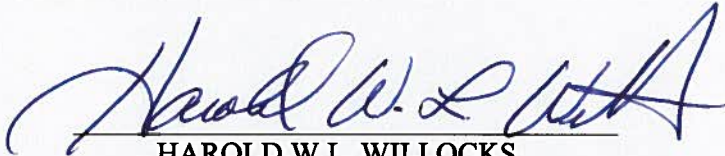
### CONCLUSION

Now that the Court clarified its October 29, 2014 memorandum opinion and order, parties should move forward with mediation. An Order consistent with this Memorandum Opinion will follow.

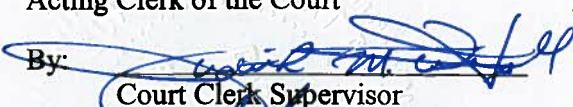
DONE and so ORDERED this 7 day of March, 2017.

**ATTEST:**

Estrella H. George  
Acting Clerk of the Court



HAROLD W.L. WILLOCKS  
Administrative Judge of the Superior Court

By: 

Court Clerk Supervisor

Dated: 3/8/17