

Not For Publication.

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

IN RE: AMELIA B. JOSEPH,
Petitioner.

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) **S. Ct. Civ. No. 2013-0015**
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On Petition for Writ of Mandamus
Considered and Filed: April 5, 2013

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

ATTORNEYS:

Amelia B. Joseph, Esq.
St. Croix, U.S.V.I.
Pro Se

Verne A. Hodge Jr., Esq.
Assistant General Counsel
Superior Court of the Virgin Islands
St. Croix, U.S.V.I.
Attorney for Respondents

OPINION OF THE COURT

PER CURIAM.

This matter is before the Court on a February 22, 2013 petition for writ of mandamus and a February 25, 2013 amendment thereto, both filed by Amelia B. Joseph, Esq., which, among other things, requests that this Court direct the Superior Court of the Virgin Islands, its Presiding Judge, and Assistant Court Administrator Lisa Davis-McGregor (collectively “Respondents”) to immediately pay her for services rendered in two court-appointed cases. For the reasons that follow, we deny the petition because issuing the writ is no longer appropriate under the circumstances, given that the Respondents have now paid her in full.

I. BACKGROUND

In the Virgin Islands, all attorneys, with certain exceptions not relevant to this matter,¹ have an obligation to accept court appointments to represent indigent criminal defendants in cases in which the attorneys employed by the Office of the Territorial Public Defender possess a conflict of interest or otherwise have been permitted to withdraw as counsel. *See* V.I.S.CT. R. 203(p). Pursuant to statute, when such a conflict exists, “the judges of the Superior Court may appoint counsel for such indigent persons from a panel of private attorneys maintained by the Superior Court for [such] purpose.” 5 V.I.C. § 3503(a). Unlike this Court,² which utilizes a panel of attorneys who have volunteered to represent indigent parties on appeal, *see* V.I.S.CT. R. 210.1(a), the Superior Court selects appointed counsel from a list of all attorneys admitted to practice law in the Virgin Islands, using a random appointment system.³

Pursuant to this procedure, a Superior Court judge, in a September 12, 2008 Order, appointed Joseph to represent the defendant in *People v. Benjamin*, Super. Ct. Crim. No. 135/2008 (STX). Similarly, in a December 6, 2010 Order, a Superior Court magistrate appointed her to represent the defendant in *People v. Othello*, Super. Ct. Crim. No. 694/2010 (STX). On December 27, 2012, Joseph requested a final payment of \$2,800.50 for the *Othello* matter, and

¹ For instance, “[m]embers of the Committee of Bar Examiners and the Ethics and Grievance Committee [are] exempt from indigent appointments” in both this Court and the Superior Court. V.I.S.CT. R. 203(p).

² The United States Court of Appeals for the Third Circuit and the District Court of the Virgin Islands also utilize a volunteer panel of private attorneys, from which each court appoints counsel to represent indigent parties to supplement appointments to the Federal Public Defender’s Office. *See* U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT, CRIMINAL JUSTICE ACT PLAN at 1, *available at* <http://www.ca3.uscourts.gov/Forms and Information Sheets/Criminal Justice Act and Appointed Counsel Information/cjaplan.pdf> (last visited Apr. 5, 2013); U.S. DISTRICT COURT FOR THE DISTRICT OF THE V.I., CRIMINAL JUSTICE ACT PLAN at 5 & App. II, *available at* http://www.vid.uscourts.gov/sites/vid/files/cja_plan_vid.pdf (last visited Apr. 5, 2013); LRCr 60.1.

³ Since the issue is not before us, we express no opinion as to whether randomly appointing counsel from a list of all members of the Virgin Islands Bar in private practice satisfies the requirement that Superior Court judges “appoint counsel for such indigent persons from a panel of private attorneys maintained by the Superior Court for [such] purpose.” 5 V.I.C. § 3503(a).

on January 8, 2013 requested an interim payment of \$5,565.00 for the *Benjamin* case. Shortly after filing these requests, Joseph filed *ex parte* motions for expedited payment, which represented that she lost her job in August 2012, that she “is a single parent . . . in dire financial straits due to past due impending expenses, including . . . [her] daughter’s [private school] tuition,” electric bills, household and office expenses, and Virgin Islands Bar dues, and that she “has expended all of her savings and must generate income immediately.” (Pet. Exh. E, F.) The Presiding Judge approved the *Othello* and *Benjamin* claims, respectively, on January 11, 2013, and January 18, 2013.

Even though the Presiding Judge approved both claims, Joseph did not immediately receive a payment from the Superior Court. When Joseph repeatedly called the Superior Court to obtain the authorized payments, she was eventually directed to Davis-McGregor, with whom she met on February 21, 2013. At the meeting, Davis-McGregor told Joseph that she could not be paid immediately, and that it may take up to 60 days to issue a check to an attorney after a judge has approved payment.

Joseph filed her petition for writ of mandamus with this Court on February 22, 2013. In her petition, Joseph argued that she sought the assistance of the Presiding Judge and the Superior Court Administrator, Glenda Caines, but that neither would assist her in obtaining payment. Joseph also represents that her financial situation has further deteriorated since she first filed her emergency motions for expedited payment, in that, among other things, (1) she received a notice that her daughter could no longer attend school until she pays an outstanding tuition bill; (2) her subscription to an electronic research service has been terminated for non-payment; and (3) her utility provider issued a disconnection notice. Joseph represents that, as of the date of her petition, she only has \$449.96 in her bank account, can no longer afford the basic necessities of

life due to her inability to receive payments from the Superior Court in a timely manner, and will soon close her law office and “qualify for welfare and food stamps.” (Pet. 9.) In addition to an order directing immediate payment, Joseph’s petition requests that this Court mandate various other remedies, including an attorney’s fees award and an “[o]rder that an independent accounting be completed to indicate how the monies earmarked for compensation of court-appointed attorneys have been paid over the past three (3) years.” (Pet. 9.)

This Court, in a February 27, 2013 Order, authorized the Respondents to respond to the petition. In their answer, filed on March 6, 2013, the Respondents either concede or do not dispute many of the allegations in Joseph’s petition. However, the Respondents argue that Joseph is not entitled to mandamus relief because “payment to court-appointed counsel is within the sphere of the [Respondents’] discretionary power,” that they “acted in exercise of their judgment and discretion regarding payment to court-appointed counsel,” and that “[t]here exists neither statute, case law nor Court Rule specifically directing the time within which [they] must submit payment to court-appointed counsel.” (Ans. 2-3.) In addition, the Respondents contend that Joseph possessed other alternatives beyond filing a mandamus petition. The Respondents also provided this Court with an affidavit executed by Davis-McGregor, in which she states that “there . . . has been a long established system by which compensation vouchers and invoices in general are processed,” “[t]hat on a regular basis, invoices may take anywhere from 30-60 days before the issuance of a check,” and “[t]hat in the course of business, and in [her] capacity as the Assistant Court Administrator, [she is] required to make decisions regarding the disbursement of funds to satisfy the [Superior] Court’s obligations.” (Ans. Exh. 3.) Moreover, while not expressly requesting that this Court dismiss this case as moot, the Respondents submitted evidence that they paid Joseph in full on March 5, 2013.

On March 12, 2013, Joseph filed a reply to the Respondents' answer. In her reply, Joseph acknowledged that she has been paid in full, but alleges that the Respondents only paid her due to the pendency of this mandamus proceeding. (Reply 2.) Joseph, relying on *United States v. Gov't of the V.I.*, 363 F.3d 276 (3d Cir. 2004) and other cases, argues that this Court should not dismiss this matter as moot because the Respondents' conduct is subject to repetition and declining to reach the merits would sanction their attempt to evade review by this Court.

II. MANDAMUS RELIEF

This Court possesses jurisdiction over original proceedings for extraordinary writs, such as a writ of mandamus. See 4 V.I.C. § 32(b); *In re Doe*, S. Ct. Civ. No. 2012-0134, 2013 WL 143457, at *1 (V.I. Jan. 10, 2013); *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, "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, 517 (V.I. 2008)). But "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." *Cheney v. U.S. Dist. Court for the D.C.*, 542 U.S. 367, 380-81 (2004); *In re Najawicz*, 2012 WL 4829227, at *1.

We agree with Joseph that the Respondents' decision to pay her in full on March 5, 2013, does not render this matter moot. First, we note that the Respondents have not moved to dismiss this matter as moot, and the mootness doctrine, as applied by Virgin Islands courts, represents a non-jurisdictional claims processing rule that is subject to waiver. See *Vazquez v. Vazquez*, 54 V.I. 485, 489 n.1 (V.I. 2010). Moreover, Joseph's petition seeks additional relief beyond an order directing immediate payment, and we agree with her that there is a reasonable likelihood

that this dispute may recur at some future date, given that she only received an interim payment in the *Benjamin* matter. See *City of Los Angeles v. Lyons*, 461 U.S. 95, 109 (1983) (case not moot “where [the alleged illegality] is capable of repetition, yet evades review”).

Nevertheless, while the Respondents’ decision to pay Joseph does not render this matter moot, it does affect our analysis of the third factor: whether a writ is appropriate under the circumstances.⁴ “To determine whether a writ of mandamus is appropriate under the circumstances, we consider factors including, but not limited to, the public interest, the importance or unimportance of the question presented, and equity and justice.” *In re People*, 51 V.I. at 393 (collecting cases). In performing this analysis, we must be cognizant of the fact that “[t]he remedy of mandamus is a drastic one, to be invoked only in extraordinary situations.” *Kerr v. United States Dist. Ct.*, 426 U.S. 394, 402 (1976).

Since Joseph has been paid, we cannot see how issuing a writ directing the Respondents to pay her would further the public interest or would otherwise be appropriate. Importantly, we emphasize that Joseph has not requested, in either her initial petition, amended petition, or reply, that this Court declare that the Respondents’ apparent present practice⁵ of taking up to 60 days to

⁴ Shortly after Joseph filed her petition, several members of the Virgin Islands Bar Association moved this Court for permission to file an *amicus curiae* brief in support of her position that she was entitled to immediate payment, which the Respondents opposed on various grounds. Given our decision to resolve this case solely on the third factor—whether a writ is appropriate in light of the Superior Court’s decision to pay Joseph in full—it is not necessary for us to address the other two factors, including whether Joseph (or court-appointed attorneys generally) possesses a clear and indisputable right to immediate compensation from the Superior Court. Thus, since we resolve this case without reaching the merits of the issue that these attorneys wish to brief, we deny the motion.

⁵ In her petition, Joseph (1) alleges that the Presiding Judge engaged in judicial misconduct by completely suspending all payments to court-appointed counsel from April 2011 through November 2011, (2) contends that those funds were diverted elsewhere, and (3) requests that this Court “[o]rder that an independent accounting be completed to indicate how the monies earmarked for compensation of court-appointed attorneys have been paid over the past three (3) years.” (Pet. 9.) Joseph does not allege, however, that a moratorium on payments to court-appointed attorneys remains in effect. Moreover, Joseph has provided this Court with no evidence that she ever requested that the Superior Court provide her with information on how it has spent its appropriations for the pertinent fiscal years, let alone that the request was denied. Additionally, Joseph herself recognizes that she

issue payments to court-appointed counsel is illegal, and we decline to *sua sponte* determine whether she might be entitled to greater relief than she has requested from this Court. *See People v. Ward*, 55 V.I. 829, 840 (V.I. 2011) (“[T]he People, in its brief, does not challenge the . . . decision to order a [new] trial . . . but requests, as the sole remedy, that this Court reverse the portions of the [decisions] that preclude [certain witnesses] from testifying at that trial. . . . [T]he People’s decision to expressly seek a lesser form of relief represents a waiver of that right.”). And while Joseph attributes the March 5, 2013 payment to a desire on the Respondents’ part to evade review by this Court, we note that Joseph represented in her petition that Davis-McGregor told her, at their February 21, 2013 meeting, that checks are typically issued within 60 days after the date a judge approves a compensation request. Since the Presiding Judge approved the *Othello* and *Benjamin* claims, respectively, on January 11, 2013, and January 18, 2013, the issuance of payment on March 5, 2013, could just as easily be attributed to Davis-McGregor simply keeping her word in accordance with the Superior Court’s general practice and procedure.

Accordingly, we simply cannot conclude that a writ of mandamus is appropriate under the circumstances. Since we base our decision solely on the fact that Joseph has failed to satisfy the third factor, we do not address whether she possessed a clear and indisputable right to expedited payment, or whether other adequate means besides mandamus relief were available to her. However, we emphasize that our silence on these issues should not be construed as agreement with the Respondents’ positions, including their claim that they possess complete and unfettered discretion with respect to when to pay court-appointed counsel. In particular, we refer the parties to our recent decision in *In re Morton*, 56 V.I. 313, 320-21 (V.I. 2012), in which we

possesses an adequate alternate means of having her misconduct claim investigated, in that she could file a complaint with the Virgin Islands Commission on Judicial Conduct. *See* V.I.S.CT. R. 209.6.1.

identified a line of cases holding that the Takings Clause of the Fifth Amendment to the United States Constitution may be implicated when a court involuntarily appoints an attorney to represent an indigent criminal defendant, as well as to section 32(e) of title 4 of the Virgin Islands Code, granting this Court exclusive jurisdiction to regulate the legal profession.

III. CONCLUSION

For the foregoing reasons, we deny the petition for writ of mandamus.

ATTEST:
VERONICA J. HANDY, ESQ.
Clerk of the Court