IN THE SUPREME COURT OF THE VIRGIN ISLANDS

IN THE MATTER OF THE APPLICATION OF: **RYAN A. SHORES,** FOR *PRO HAC VICE* ADMISSION TO THE VIRGIN ISLANDS BAR.	)	**S.Ct. BA. No. 2013-0148** Re: Super. Ct. Civ. No. 143/2013 (STX)
IN THE MATTER OF THE APPLICATION OF: **WILLIAM L. WEHRUM, JR.,** FOR *PRO HAC VICE* ADMISSION TO THE VIRGIN ISLANDS BAR.	)	**S.Ct. BA. No. 2013-0149** Re: Super. Ct. Civ. No. 143/2013 (STX)

APPLICANTS' JOINT REPLY
TO THE COMMITTEE OF BAR EXAMINERS'
RESPONSE TO THE COURT'S ORDER OF SEPTEMBER 9, 2013

I. The Committee's Argument Ignores the Plain Language of the Rule

A. Language of the Rule. Rule 201 provides as follows:

> No attorney ***or*** law firm may appear *pro hac vice* in more than a total of three causes…Extended practice on a *pro hac vice* basis is hereby expressly prohibited and **any *attorney* desirous of undertaking more than three (3) total appearances** shall seek regular admission to the Bar in order to share the burdens of local practice…

V.I.S.CT.R. 201(a)(4) (emphasis added). The wording of the Rule must be interpreted according to its plain meaning.

> §42. Words and phrases. Words and phrases shall be read with their context and shall be construed according to the common and approved usage of the English language. . . .

1 V.I.C. § 42 and *In re Application No. 00017*, 50 VI 594, 2008 WL 3874283, (D.V.I. Aug. 11, 2008).[1] Under the Rule's plain meaning, there are two prohibitions: (1) "no attorney" may appear *pro hac vice* in more than three causes; and (2) "no. . . law firm" may appear *pro hac vice* in more than three causes. Neither prohibition is triggered here: The Committee agrees that neither Wehrum or Shores has been admitted more than a total of three times, nor has the "law firm" of Hunton & Williams ever been admitted.

Thus, the Committee argues – despite the plain language of the Rule – the real (but hidden) underlying ***intent*** is otherwise.

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[1] The District Court described, at *4, the primary canon of interpretation of a court rule relating to an application for admission.

> The unambiguous text of Rule 304(a) provides that an applicant must successfully complete the examination requirements in order to be eligible for regular admission to the V.I. Bar. The Rule makes no exception to the examination requirements for attorneys with experience practicing in the territory, or for any other type of attorney. The Court finds that the Applicant's ***attempt to create ambiguity*** as to the mandatory nature of the examination requirements is ***foreclosed by the plain language*** of Rule 304. *See E.I. DuPont De Nemours and Co. v. United States*, 460 F.3d 515, 526 n. 16 (3d Cir. 2006) (noting that when the terms of a text are unambiguous, the inquiry should be restricted to the plain meaning of that text); *see also United States v. Parise*, 159 F.3d 790, 799 (3d Cir.1998) (cautioning that courts must "refrain from reading additional provisions into a statute when its meaning is clear").

B. The Rule as it Applies to Law Firms. The Committee concedes that, under this Court's rules, law firms may not be admitted *pro hac vice.* Committee's Brief at 3. Thus, the Committee does not suggest that Hunton & Williams itself has been admitted in excess of three times. As such is the case, one clause of the Rule is not involved here: "No. . .law firm [seeks to] appear *pro hac vice* in more than a total of three causes."

C. The Rule as it Applies to Lawyers. The other clause of the Rule states: "No attorney . . . may appear *pro hac vice* in more than a total of three causes." Also "any ***attorney*** desirous of undertaking more than three (3) total appearances shall seek regular admission." The Committee agrees that neither Wehrum or Shores has been admitted more than a total of three times. Committee's Brief at 2 ("[S]hores and Wehrum have not previously been admitted *pro hac vice* in the Virgin Islands.") Thus, there is no dispute that the plain language of the Rule will not be implicated by their admission.

Indeed, the application form for such admissions makes it clear that the Court believes that the Rule does not address the aggregate number of attorneys in a firm. Question 7(a) asks:

> 7. (a) Have ***you*** ever been admitted *pro hac vice* in any previous Superior Court (formerly the Territorial Court of the Virgin Islands) or District Court matter(s)? (Emphasis added.)

See Exhibit B to the Declaration of Joel H. Holt, Esq. in support of the applications. This question makes no mention of admissions by other members of the applicant's firm. Similarly, question 7(b) asks the *attorney*-applicant the number of such cases "in which ***you*** participated." Again, there is no mention of, or separate question seeking information on the number of times that members of the lawyer's ***firm*** have been admitted. The Committee ignores the language of the admission form, which is consistent with the plain meaning of the Rule and contrary to the Committee's new interpretation.

II. The Amendment or New Rule the Committee Proposes

A. Other States have Pro Hac Vice Rules aimed at Aggregate Firm Appearances. The Committee provides examples of other states where a *different rule* explicitly states that *the aggregate number of lawyers from a given firm* cannot exceed three. *See, e.g.*, the Committee's Brief at 4:

> Several jurisdictions explicitly apply limitations on *pro hac vice* admissions on a firm-wide basis. See, e.g., IND. ST. ADMIS. & DISC. R. 3 § 2(a)(4)(vii) ("Absent good cause, repeated appearances by any person ***or by members of a single law firm*** pursuant to this rule shall be cause for denial of the petition"). (Emphasis added.)

In fact, the Committee notes that other jurisdictions have changed their rules to reach this end, as they sought to regulate *pro hac vice* admissions in conjunction with multistate practice considerations. Thus, these jurisdictions explicitly

amended their rules to either create or remove limitations on *pro hac vice* admissions on a firm-wide basis.

The Committee suggests that, although our Rule does not mention aggregation as do the rules in the other jurisdictions, our Rule must actually *intend* such an outcome despite the plain, unambiguous language. The Committee encourages this Court to adopt the view that "a plain reading of V.I.S.CT.R. 201(a)(4) *clearly indicates* that the numerical limitation on *pro hac vice* admissions *must apply* to members or employees of a law firm, rather than the law firm itself." *Id.* at 4 (emphasis added). But such a "plain reading" of our Rule clearly indicates the opposite. If the Court wishes to *change* our Rule, the language from the other jurisdictions could be used as a guide, and this amendment should go through the proper procedures.

B. Nor do the Cases Cited by the Committee Support the Proposed New Rule. The Committee directs the Court's attention to *Waite v. Clark Cnty. Collection Servs., LLC*, 2:11-CV-01741-LRH, 2012 WL 6812172 (D. Nev. Oct. 16, 2012), *report and recommendation adopted*, 2:11-CV-5 01741-LRH, 2013 WL 85157 (D. Nev. Jan. 7, 2013) and *Smith v. Beaufort Cnty. Hosp. Ass'n, Inc.*, 141 N.C. App. 203, 215, 540 S.E.2d 775, 782-83 (2000) *aff'd sub nom* and *Smith ex*

rel. Estate of Smith v. Beaufort Cnty. Hosp. Ass'n, Inc., 354 N.C. 212, 552 S.E.2d 139 (2001).[2]

Waite directly supports Applicants. The rule in Nevada (at issue in *Waite*) did *not* limit the aggregate number of *pro hac vice* admissions on its face either.[3] But the solution employed in Nevada was not to stretch the existing rule or judicially re-write it through "intent." Instead, as the Committee's Brief notes at 5, that Court *correctly* suggested that the way to address the variance between language and any such possible intent was *amending* the rule.

> [T]he court found that a firm's twenty-five appearances over three years "through the alleged 'of counsel' attorneys [was] excessive" **and recommended *amendment* of the local rules** "to limit the number of *pro hac vice* appearances by ***members*** of a law firm, if that law firm has not complied with the State Bar of Nevada's Multi-Jurisdictional Law Firm registration requirements." (Emphasis added).

[2] At 3 of its brief, the Committee also cites to *Daybreak Grp., Inc. v. Three Creeks Ranch, LLC*, 162 Cal. App. 4th 37, 41, 75 Cal. Rptr. 3d 365, 367 (2008). However, this citation is simply a repetition of the proposition that "local rule[s] do[] not permit law firm[s] to be admitted *pro hac vice* because rule 'limits eligibility' for a *pro hac vice* designation to a person who is 'a member in good standing of and eligible to practice before the bar of any United States court or the highest court in any state, territory, or insular possession of the United States.'" Confusingly, the Committee cites a California case, interpreting California and Montana *pro hac vice* rules for the proposition that the Virgin Islands "Supreme Court Rules clearly contemplate that both regular and *pro hac vice* admission to the Virgin Islands Bar is reserved for individual attorneys, and not law firms."

[3] There, a rule similar to ours was explicitly changed to end the practice of numerical limitations of admission by attorneys from a given firm.

Thus, *Waite* supports the view that if the Court wishes to consider the aggregate number of attorneys from law firms or further regulate multistate practice by firms, the Rule should be amended to address the practice.

III. Other Problems with the Committee's Suggested Interpretation

The Committee's proposed new rule also leads to numerous questions, which are problematic in an "interpretation" of the "intent" of the existing language. For example:

- *Hypothetical I*: Lawyers Able, Baker, and Charlie have each, while in other firms, represented clients *pro hac vice* in the USVI twice in the past. Last year they joined together to create the "Baker Firm." Can Lawyer Able represent a client *pro hac vice* in the USVI?
- *Hypothetical II*: Lawyer D leaves the "Jones Firm," where members of that firm had appeared in the District Court of the Virgin Islands *pro hac vice* 3 times, though Lawyer D never appeared here personally. Can Lawyer D appear in the USVI *pro hac vice*? If Lawyer E – who has never represented anyone in the USVI – joins the Jones firm, is he then prevented from *pro hac vice* appearances?
- *Hypothetical III*: Lawyers from the "Green firm" have practiced before this Court twice *pro hac vice*. Green Firm merges with the "Orange firm,"

where lawyers also have been admitted twice *pro hac vice*. A new attorney with the firm, just admitted to practice in New York, makes a *pro hac vice* application here. What is the result?

- *Hypothetical IV:* The "Smith Firm" was established in 2009. In 2010, it hires Attorney J. At the time, the Smith Firm had never been admitted *pro hac vice* in this Court. An attorney from the Smith Firm files a *pro hac vice* application, and it turns out that Attorney J had been admitted *pro hac vice* on three separate occasions, with the most recent admission being in 2005, before the Smith Firm even existed. What is the result?
- *Hypothetical V:* Firm Y has three lawyers admitted *pro hac vice* for a single case. Firm Z has had two attorneys admitted for two different cases. Under the existing rule, is Firm Y precluded from any additional *pro hac vice* admissions, but Firm Z has one remaining? If Firm Y had asked to have four attorneys to be admitted for its one case due to the size and complexity of the matters raised, would the Court have only permitted three of them?

As another example of the issues created, Rule 201 actually refers to "three causes" as to "law firms"—not three *appearances*. So would this mean that (i) if 11 lawyers from a firm wished to appear in the same case, the bar would not apply; or (ii) if lawyers from the firm appeared in three nominally separate but directly

intertwined cases, the bar would apply? Because the language of the Rule does not actually address these issues, and *there has never been any rulemaking or discussion of the "new" rule the Committee proposes in its brief*, there is no basis or history for consideration of these issues (and this is particularly true where the local District Court takes an entirely different approach). As discussed in the "waiver" section below, the Committee's discussion of past admissions[4] of Hunton & Williams in the District Court (which the Committee notes has its own rules[5]) further highlights the problems with the Committee's interpretation. Thus, this is a history and discussion that would exist if an actual rule is proposed and considered.

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[4] Similarly, *Smith v. Beaufort* involved a discretionary factual determination by the court and a summary *revocation* of permission to practice *pro hac vice*—complicated by serious issues not present here. It was a decision of a trial judge based on a factual record where there was a "finding that the Gary Law Firm solicited business in [the state]," which was not contested. *Id. at* 141 NC App 203, 215, 540 S.E.2d 775, 782-83, 2000 WL 1879557 (NC Ct App 2000). The appellate court determined that the number of admissions could be considered, not that it was determinative under the rule. In fact, the reviewing court noted that it would have been an error to exclude the firm based solely on a numerical consideration and approached the matter with caution:

> We recognize that this issue is a matter of first impression in North Carolina, and rightfully we approach it with caution."

Id. at 783.

[5] The Committee noted at 5 of its brief, "the District Court has elected not to limit *pro hac vice* admissions on a firm-wide basis." Applicants do not suggest that this Court must follow that rule, only that, in the absence of definitive language in this Court's rule, it is relevant that the authors of this Rule (and the application form) may have known of this fact and understood it.

Again, this is the problem with stretching the language of rules to include matters they do not address – there is no history or context for the "new" interpretation.[6] *Ex post* rulemaking by trying to divine "intent" leaves numerous questions unanswered and is not a fair or efficient practice.

IV. Equitable Waiver

After conceding, at 6, that the Supreme Court *can* equitably waive the provisions of V.I.S.CT.R. 201, the Committee makes many *factual* arguments regarding this specific waiver request. Thus, it presents a brief grounded *firmly* in facts and discretion, not law.[7] It sets forth the following three factual positions:

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[6] The Committee suggests, at 5 of its brief, that *McFaul* is irrelevant here:

> This issue was raised in *In re Pro Hac Vice Admission of McFaul*, where a party contended that Supreme Court Rule 201 "should be read to limit the total number of appearances by attorneys affiliated with a particular law firm to three," *but the court did not address this argument because the party "had ample opportunity" to contest the pro hac vice motion and failed to do so.* S.Ct. BA No. 2008-092, 2009 WL 530716, at * 1 (Mar. 2, 2009). (Emphasis added.)

However, *McFaul* suggests that, at the very least this Court considers the wording here to create a discretionary situation as was the case in *Smith*, discussed *supra* at note 4. In *McFaul* the opposing party was provided with clear and full notice of the issue and did not object. The Court held that the uncontested motion meant that the matter, if not objected to by opposing counsel, was *waivable*. *McFaul* allows the view that a *pro hac vice* admission under such conditions is not such a dangerous situation that it had to be addressed regardless of the procedural and developmental posture. Thus, this Court appears to suggest this is a matter of true discretion.

[7] The Committee does suggest a Court's exercise of discretion in some other jurisdictions is limited to situations where a "'valid and extraordinary reason exists' that justifies

A. That this case is factually different from Payton

Payton involved an attorney who was unable to pass the V.I. Bar examination "numerous times." He then effectively practiced by *pro hac vice* admissions. Finally, despite never passing a bar exam, he was admitted because, as the Bar Committee puts it, the Court found:

> As the applicant in *Payton* had practiced in the Virgin Islands for many years and continued to practice after his retirement from government service, the court found that there was "substantial evidence that Payton's knowledge of Virgin Islands practice ha[d] not become stale and that he presently possesses skills that are equivalent to a specially-admitted attorney," and that he had "met the high burden necessary to obtain an equitable waiver." *Id*.

However, the Court did not hold its discretion is limited to sole practitioners who are representing clients in single-jurisdiction cases under local USVI law. The instant petitions for admission implicate this Court's consideration of multi-jurisdictional matters, with the first complaint filed in Kentucky many months before a complaint was filed in the Virgin Islands. At the time the Kentucky case was filed, the *client* selected national coordinating litigation counsel (including Shores) and environmental counsel (Wehrum) to work on *all* related matters and work with attorneys in various jurisdictions. The *client* has invested significant

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'dispens[ing] with [the rule] in this particular case'" because "[i]ndividualized waiver determinations would be extremely time consuming [and] financially burdensome," and invite the "risk of disparate treatment." *Id.* at 6. But no such rule limiting the discretion of this Court exists here.

resources in these attorneys; desires to have a coordinated strategy; and these attorneys, particularly because of their experience in multi-jurisdictional matters in other jurisdictions and their expertise, are uniquely qualified to assist local counsel and protect the *client's interests* throughout this multi-jurisdictional matter. Thus, Applicants seek a very limited waiver under the unusual facts of this case. It is not solely a matter of expertise on the part of V.I. counsel, but rather the broader perspective in multiple state litigation brought by national plaintiffs' class action counsel.

The Committee observes, at 12, that:

> The fact that Shores and Wehrum are specialists, ***standing alone***, does not constitute a valid or extraordinary reason to depart from the three admission limitation. (Emphasis added).

The key phrase here is "standing alone." This is a factual weighing of factors in the exercise of discretion. As we have discussed, this is a complex, multi-jurisdictional matter involving complex federal laws. Attorneys Hartmann and Holt have practiced extensively in local and federal cases in the USVI—and have litigated complex environmental cases to large and favorable conclusions. Hartmann Declaration, Exhibit A hereto, at ¶ 11. But in a prior case they undertook in the USVI, they recognized that extremely complex issues of federal environmental law can require additional assistance—and obtained the services of

a similar expert attorney—moving his admission *pro hac vice*. *Id*. at ¶ 13. This is not just a situation where a specialist has been hired, but one in which two highly experienced local counsel have in the past, and again wish to associate with specialist counsel. While Applicants do not suggest this should be determinative, it should be another "factor" favorable to the Applicants in the Court's consideration.

The Committee counters, at 12, that:

> "Supreme Court Rule 201, by its own terms, does not require that this Court grant *pro hac vice* admission as of right to every attorney who fulfills all four enumerated requirements, but [r]ather…provides that [a]n attorney not regularly or specially admitted to practice law in the Virgin Islands...*may*…be admitted *pro hac vice* to participate in that legal matter only." *In re Admission of Alvis*, 54 V.I. at 412 (internal citations and quotation marks omitted); *see also Leis v. Flynt*, 439 U.S. 438, 443 99 S.Ct. 698, 58 L.Ed. 2d 717, *rehearing denied*, 441 U.S. 956, 99 S.Ct. 2185, 60 L.Ed. 2d 1060 (1979) (the "Constitution does not require that, because a lawyer has been admitted to the bar of one State, he or she must be allowed to practice in another") (citations omitted). Indeed, if an attorney's area of specialized practice entitled him or her to a waiver of the numerical limitation in the Rule, "specialists" would be completely exempt from that limitation, a result the language of the Rule does not invite.

And at footnote 7:

> Notably, while the petitions for both Shores and Wehrum's *pro hac vice* admissions contend that Holt cannot assist in these specialty areas, the petitions do not allege that there are no attorneys licensed to practice in the Virgin Islands who could perform these services.

Although it could be argued that Hartmann and Holt have as much experience with these matters as anyone in the USVI (Hartmann Declaration at ¶ 14), the Court is also asked to factor in the desire of the *client* and what the *client* believes is in its best interests. *Id*. at ¶¶ 14-15. This case is part of a number of actions brought *by the same plaintiffs' class action counsel*[8] in multiple jurisdictions and one simply does not, and cannot, hire this level of attorney in every jurisdiction. *Id*. at ¶ 15.

If Applicants' request is denied, plaintiffs will be permitted to admit multi-jurisdictional coordinating counsel simply because that counsel has not had colleagues admitted into the U.S.V.I. *federal court*, but the defendant will be prohibited from the same. This is another factor, and a matter of fundamental fairness. *Pro hac vice* admission is not a one-size-fits-all issue. While one does not wish to have an exception that subsumes the rule, when tens of millions of dollars involving a critical local industry are involved and there are already two highly experienced supervising local counsel, it is not impertinent to ask this Court to consider the equitable factors surrounding such a request.

The Bar Committee also seems to suggest to the Court that in this case the Applicants may lack the same high level of knowledge of the USVI law possessed by Payton. But as their biographies make clear, these attorneys are highly skilled

[8] That national plaintiffs' class action counsel has applied to appear *pro hac vice* here, although the Court has requested additional information regarding the application.

practitioners (*id*. at ¶ 8), and the matter for which they make application includes highly sophisticated issues of interpretation of federal regulatory matters. Again, by our rules Applicants would have not only the assistance of, but also *supervision* by two local attorneys with more than 55 years of combined local V.I. experience. *Id*. at ¶ 12. Moreover, the Applicants can assist the two local attorneys, not just with their subject matter expertise, but their broader experience dealing with the same issues across the multiple jurisdictions involved.

B. The Committee's proposition regarding the essential purpose of the Rule

The Bar Committee argues, at 9-10, that:

> As Supreme Court Rule 201(a)(4) expressly states, the purpose of this three appearance limit is to further the legitimate interest of ensuring that all individuals practicing law in the Virgin Islands on more than a fleeting or infrequent basis—including those who do not reside in the Virgin Islands or who practice primarily in the District Court—'share the burdens of local practice,' which includes accepting indigent appointments in both this Court and the Superior Court…).
>
> If granted admission *pro hac vice*, Shores and Wehrum would be insulated from sharing "the burdens of local practice," and would not be required to accept indigent appointments. Expanding the scope of *pro hac vice* admissions to permit admission of more than three attorneys per firm would set a dangerous precedent and would be "detrimental to the public interest" as additional attorneys are granted admission who will subsequently avoid the obligation of accepting indigent appointments. In turn, this construction of the Rule would proportionately increase the burden on the regular members of the Bar, who do share the obligation to undertake such appointments. As this result would be in contravention of the express purposes of the Virgin Islands Bar rules governing admission, it weighs against

> granting Shores and Wehrum an equitable waiver of the requirements of V.I.S.CT. R. 201(a)(4).

While accepting appointment to assigned indigent cases is laudable and important work, which undersigned counsel happily does, the nature of such appointments can be considered in light of other factors within the discretion of the Court—where circumstances warrant. For example, members of a number of committees are not assigned to represent indigent clients. Thus, the public interest regarding such appointments is *weighed* against other factors such as other value to the community. In a situation where a major client is represented by *several* local lawyers as well, factors such as need for national coordination, the economic and tax benefits of the industry, the support for the community and other considerations can also be weighed if it desires to have two non-member counsel *also* appear.

Applicants simply point out once again that if this is a matter of true discretion, then a number of factors can be considered.

C. The allegation of frequent pro hac vice admissions of Hunton & Williams' attorneys before Virgin Islands courts

The Committee's analysis of the chart appended to Exhibit A to the Holt Affidavit, while correct on first glance, does not give a complete picture. First, all but one of these admissions were in the District Court. These admissions were proper and consistent with the rules of the District Court. Only one application, in

2009, was in the Superior Court. The 2009 *pro hac vice application form* did not ask (indeed, the application has *never* asked[9]) about admissions of other attorneys in the law firm; and the case cited *in the Committee's own brief* mandating disclosure of appearances in District Court—where the other appearances occurred—was *after* the 2009 application. *In re Admission of Alvis*, 54 V.I. 408 (2010).

Admitting that this is a case of first impression, that on a prior occasion this Court allowed such a representation (albeit on a procedural basis), and that the questionnaire makes no mention of firm admissions—it is difficult to accurately imply that firms should have known better. And while "twenty-three of *the admissions* have taken place since 2004" a closer reading of the chart reveals that because of the confusion in trying to stretch the Rule, facts and concepts are being mixed like apples and oranges.[10]

[9] Law firms like Hunton & Williams do not always collect data on *pro hac vice* admissions. Thus, data for the chart had to be collected by sending out an all-firm email requesting any information on prior *pro hac vice* admission to any V.I. court.

[10] There is an irony in the juxtaposition of two Committee positions: that, on the one hand, Hunton & Williams should have 'revealed' prior *pro hac vice* admissions in the 2009 motion for admission, and, on the other hand, that local experience is necessary to guide outsiders on local law. As this Court's records demonstrate, the February 6, 2009, motion was *not* moved by Hunton & Williams – but rather by respected and experienced local counsel Bernard Pattie.

Going back to the hypotheticals above, Hunton & Williams Attorney Todd M. Stenerson's prior admission is described on the chart, which reflects that he represented Wal-Mart when he was with another firm entirely—Howard & Howard. How is that to be counted? Moreover, most of the other "admissions" took place in two related sets of federal "causes" (the red mud/dust cases involving the Alcoa/Renaissance site[11] and Innovative Communications). So how does this retrospective and revisionary calculus under the proposed rule work—is each sub-case counted as a separate *cause*? If we *are* counting by firm, do multiple admissions in a single, larger case count as one cause? If a firm has been admitted in one case and opposing counsel bring three additional, directly related cases, is the initial firm suddenly inadmissible as to the related cases? How about joined or severed cases? Moreover, returning to the equities and factors discussed above—will the Court consider (in fashioning the outline of this new rule) that in the alumina site cases there were at least four local firms and a half-dozen local USVI counsel deeply involved?

We believe that the existing Rule raises a question of first impression that should be resolved by amendment of the Rule by the appropriate process. Under the plain meaning of the Rule, we ask this Court to admit the Applicants *pro hac*

[11] *Josephat Henry, SCRG v. SCA, DPNR v. SCRG, Commissioner of DPNR, LaBast*, and *Abenego*.

vice pursuant to the plain language of the existing rule. In the alternative, we would ask the Court to exercise its sound discretion and equitably waive the provisions of V.I.S.CT.R. 201 under the unique multi-jurisdictional, multi-case, multiple supervising local lawyer circumstances where the other party has a national, coordinating class action counsel.

Respectfully Submitted,

Dated: October 9, 2013

/s/ Carl J. Hartmann III
Carl J. Hartmann III, Esq.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th day of October, 2013, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following counsel of record in this Application:

MARIA TANKENSON HODGE, ESQ.
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with courtesy copies by email to all counsel of record in the underlying civil action for which such admission is sought.

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/s/ Carl J. Hartmann III
Carl J. Hartmann III, Esq.

Exhibit A

Declaration of
Carl J. Hartmann III, Esq.

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

IN THE MATTER OF THE APPLICATION OF: **RYAN A. SHORES,** FOR *PRO HAC VICE* ADMISSION TO THE VIRGIN ISLANDS BAR.	)	**S.Ct. BA. No. 2013-0148** Re: Super. Ct. Civ. No. 143/2013 (STX)
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EXHIBIT
A

DECLARATION OF CARL J. HARTMANN IN SUPPORT OF MOTION FOR ADMISSION *PRO HAC VICE*

I state the following under penalty of perjury:

I, Carl J. Hartmann III, Esq., being duly sworn hereby state as follows:

1. I am an adult resident of St. Croix and am familiar with the facts asserted.

2. I am an attorney in good standing and an active member of the Virgin Islands Bar Association. I have been a member of this Bar and practiced before the Territorial courts since April 7, 1991. Prior to that I was admitted to appear and did appear here *pro hac vice* in 1988-1991. My Bar Number is 48.

3. I am counsel of record as to the Petitions for the admission of Ryan A. Shores, Esq. and William L. Wehrum, Jr., Esq. ("Applicants") for admission *pro hac vice* before this Court and submit this Declaration in support of the Petitions. Joel Holt and I are counsel in the underlying civil action for which admission is sought.

4. Ryan A. Shores of the Washington, D.C. office of Hunton & Williams LLP has been retained by Diageo USVI, Inc. ("Diageo USVI") to represent its interests in a pending case filed against it in the Superior Court of the Virgin Islands, *Alleyne v. Cruzan Viril, Ltd and Diageo USVI, Inc.,* Civ. No. SX 13-CV-143, in which I am local counsel of record. This case involves alleged property damages due to the emission of ethanol from the defendants' rum distilling operations.

5. Ryan A, Shores is a specialist in coordinating multistate national litigation for clients such as Diageo USVI, which has retained his services for this specialized purpose.

6. William L. Wehrum, Jr. of the Washington, D.C. office of Hunton & Williams LLP was also retained by Diageo USVI.

7. William L. Wehrum, Jr. is an expert in applicable federal environmental air regulations and was retained by Diageo USVI for this specialized purpose.

8. These attorneys are highly skilled, experienced practitioners. *See, e.g.*, www.hunton.com/Ryan_Shores/[1] and www.hunton.com/William_Wehrum/.[2]

9. The underlying civil case involves unique legal issues for Diageo USVI, as the same issues raised in this case have also been alleged in other distillery operations in other locations, including pending litigation in Kentucky.

10. Because the issues raised involve multiple jurisdictions, the coordination of the cases requires national counsel, which Ryan Shores performs for Diageo USVI, and which services cannot be performed by me, a sole practitioner who has had no involvement with the Kentucky litigation, and does not and has never practiced or appeared in Kentucky.

11. Attorney Holt and I have practiced extensively in local and federal cases in the USVI – and have litigated complex environmental cases to large and favorable conclusions. In 2011 we obtained a $28 million jury verdict in a federal jury trial involving territorial and federal environmental laws. In 2012 we obtained

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[1] "Served as a law clerk to the late Chief Justice William H. Rehnquist of the US Supreme Court and Judge Kenneth F. Ripple of the US Court of Appeals for the Seventh Circuit. Ryan is admitted to practice before the US Supreme Court; the US Court of Appeals for the Third, Fourth, Sixth, Federal and District of Columbia Circuits; and numerous district courts."

[2] "Two years as Acting Assistant Administrator for Air and Radiation at the U.S. Environmental Protection Agency. As EPA's senior official on air issues, he was responsible for all aspects of the Agency's air program--from stationary sources, to motor vehicles and fuels, to climate change. Before accepting this position, he served for four years as the chief counselor of the Assistant Administrator."

a large and significant CERCLA settlement which the Court determined to be beneficial for the citizens of the Territory.

12. Together we have in excess of 55 years of experience as attorneys admitted to just this Bar. We have both previously supervised attorneys admitted *pro hac vice* to practice before Territorial courts.

13. In the 2011 case, we recognized that extremely complex issues of federal environmental law can require additional assistance – and obtained the services of an environmental expert attorney, Jeffrey Sepesi, and moved his admission *pro hac vice*.

14. Although it could be argued that we have as much experience with these matters as anyone in the USVI, this application reflects the desire of the *client* and what the *client* believes is in its best interests -- as conveyed to us.

15. This case is part of a number of actions brought by the same plaintiffs' class action counsel in multiple jurisdictions. It is my opinion, conveyed to my client, that if Applicants' request is denied, plaintiffs will be permitted to have an inequitable advantage of multi-jurisdictional coordinating counsel simply because they have not had colleagues that have been admitted into *federal court* in the U.S.V.I..

SO SAYETH THE DECLARANT UPON HIS OATH.

Dated: October 8th, 2013

/s/

Carl J. Hartmann III, Esq.
Counsel for Applicants
5000 Est. Coakley Bay, L6
Christiansted, Vl 00820
Telephone: (340) 719-8941
Email: carl@carlhartmann.com

NOTARY

State of New York)
) ss.
County of New York (Manhattan))

The undersigned is a Notary Public in the State of New York. The above-signed Carl J. Hartmann III did appear before me in person this 8th day of October, 2013. After identifying himself to me, he did affix his signature hereto.

Notary Public

SEAL

My Commission Expires: 05-23-2015

ELIZABETH ~~FLOROS~~ Rigoll
Notary Public - State of New York
NO. 01FL6241462
Qualified in Queens County
My Commission Expires 05-23-2015