

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

ADELBERT M. BRYAN,

Petitioner,

v.

CAROLINE F. FAWKES, In her Official Capacity as  
Supervisor of Elections and V.I. JOINT BOARDS OF  
ELECTIONS,

Respondents.

CASE NO.: SX-14-CV-144

Petition for Review  
Pursuant to 18 V.I.C. § 412

**PETITIONER ADELBERT M. BRYAN'S EMERGENCY MOTION FOR  
ENFORCEMENT OF JUDGMENT AND FOR CONTEMPT SANCTIONS**

COMES NOW, Adelbert M. Bryan, by and through his undersigned counsel, and hereby files this emergency motion for enforcement of judgment and for contempt sanctions. For the following reasons, Petitioner respectfully requests that his motion is granted.

**Factual and Procedural Background:**

The catalyst of all the legal wrangling that has occurred involving the parties began with the Plaintiff Alicia Hansen ("Hansen") being indicted for, *inter alia*, multiple counts of willful failure to file income tax returns. After a jury trial, a jury returned a verdict of guilty on three counts of willful failure to file income tax returns, and were dead-locked on the filing of a false tax return count. The District Court sentenced Hansen to three consecutive years of incarceration which were suspended, and placed her on three consecutive years of supervised probation. The District Court also ordered Hansen to file the returns and pay whatever outstanding taxes were due. In 2010, Hansen ran for the 29<sup>th</sup> Legislature of the Virgin Islands, and was elected to office despite serving out her sentence and being ineligible to hold public office. In 2012, Hansen ran for a seat in the 30<sup>th</sup> Legislature of the Virgin Islands and was elected to office despite being ineligible to hold public office. On May 13, 2014, Hansen filed nomination papers with Caroline F. Fawkes ("Fawkes") the Supervisor of Elections for the

Virgin Islands, and Fawkes initial deemed Hansen to be eligible. On May 13, 2014, Adelbert M. Bryan ("Bryan") objected to Hansen's nomination papers and timely filed his complaint with Fawkes. On May 14, 2014, Fawkes wrote to Bryan and advised him that she had deemed Hansen to be eligible and certified her as such. Fawkes further advised Bryan that he had a right to appeal her decision to the Superior Court of the Virgin Islands ("Superior Court") pursuant to 18 V.I.C. § 412, which Bryan timely did.

On June 17, 2014, the Superior Court permitted Hansen to intervene in the objection proceedings. In the objection proceedings, Fawkes argued that the Court was required to defer and accept her decision regarding Hansen's eligibility, and Hansen moved to dismiss the entire case asserting that the Superior Court did not have jurisdiction. On June 29, 2014, the Superior Court granted Fawkes's motion and denied Bryan's objection to Hansen's nomination papers.

On August 4, 2014, Bryan filed his notice of appeal with the Supreme Court of the Virgin Islands ("Supreme Court"), and on August 5, 2014, requested that the court expedite the case. The Supreme Court granted Bryan's motion, and set an expedited briefing schedule. On August 26, 2014, the Supreme Court heard arguments on Bryan's objection, and all parties involved had an opportunity to fully brief the issues and argue the issues before the Supreme Court. On August 28, 2014, the Supreme Court held that Hansen was ineligible to be a member of the 31<sup>st</sup> Legislature of the Virgin Islands because she had been convicted of crimes involving moral turpitude. The Supreme Court then ordered that Superior Court enter an order granting Bryan's petition objecting to Hansen's nomination papers and further that the Superior Court order Fawkes to remove Hansen's name from the 2014 General Election Ballot. On August 29, 2014, on remand, the Superior Court entered an Order granting Bryan's petition, and ordering Fawkes to remove Hansen's name from the 2014 General Election Ballot as ordered by the VI Supreme Court.

On August 29, 2014, counsel for Hansen wrote to Fawkes and advised her that Hansen was in receipt of the Superior Court's order granting Bryan's petition and removing Hansen from the 2014 General Election Ballot, and that she would await a notice of defect so that she could cure her nomination papers. On August 31, 2014, the Governor of the Virgin Islands ("Governor") issued a press release stating that Hansen's counsel had publicly requested a pardon for Hansen, and that he has ordered the Virgin Islands Attorney General to research the issue of the pardon and whether the pardon would allow for Hansen to be placed back on the 2014 General Election Ballot. On September 2, 2014, Fawkes wrote to Hansen and advised her that pursuant to the Court's order granting Bryan's petition and further removing her name from the 2014 General Election Ballot, she is disqualified. On September 3, 2014, the Virgin Islands Attorney General issued a legal opinion opining that the Governor has the authority to pardon Hansen, and that she is eligible to be returned to the 2014 General Election Ballot because the pardon has removed her ineligibility. On September 3, 2014, the Governor pardoned Hansen. On September 4, 2014, Hansen filed new petition papers, which Fawkes rejected and refused to place her on the 2014 General Election Ballot citing to the court orders. On September 4, 2014, the undersigned wrote to the Virgin Islands Attorney General specifically outlining the erroneous application of law to the facts of this case and advised him of the consequences of violating the court orders removing Hansen from the 2014 General Election Ballot. On or about September 8, 2014, Hansen as well as five other plaintiffs filed the instant matters before the District Court alleging that Hansen's pardon made her eligible to be placed on the 2014 General Election Ballot, and that Fawkes's refusal to place Hansen back on the 2014 General Election Ballot violated the Revised Organic Act of 1954, as amended, and that such conduct violated their constitutional rights to vote for the candidate of their choice.

On September 10, 2014, the District Court held a hearing on the Plaintiffs' requests for a Temporary Restraining Order ("TRO"). The parties also agreed to consolidate the cases. At the hearing, the Plaintiffs' argued that their constitutional rights were being violated by Fawkes's refusal to return Hansen's name back on the 2014 General Election Ballot. They further argued that their right to vote for the candidate of their choice violated their constitutional rights. Finally, they argued that the pardon issued by the Governor was retroactive and therefore, Hansen's papers filed in September 2014 cured any defects there were in May 2014. Surprisingly, or maybe not so surprisingly, the Virgin Islands Attorney General, through his Assistant Attorney General Carol Thomas-Jacobs, acting as the legal representative for the Defendants, agreed with the Plaintiffs' and argued all points identically to what Plaintiffs had argued. In fact, the District Court even queried whether the Defendants and the Plaintiffs were arguing the same position to which Jacobs responded "yes." Jacobs had a myriad of legal defenses to which she could have presented to the District Court in defense of the Defendants in this case, and intentionally did not do so. To the detriment of her clients, Jacobs argued the position of the opinion given by the Virgin Islands Attorney General rather than the defenses and positions to be taken to protect the interest of the Defendants—her clients.

On September 12, 2014, the District Court granted Plaintiffs' motion for a TRO and noted that the parties agree that the TRO is appropriate. Moreover, the District Court rejected the parties' argument that a pardon is retroactive, but agreed with Plaintiff's that Hansen had a statutory right to cure her September 4, 2014 nomination papers filed with Fawkes. The District Court ordered that Fawkes return Hansen's name to the 2014 General Election Ballot. The District Court further ordered the parties to give it notice if it wanted to present additional briefing on the issue and/or requested oral arguments, and to give this notice no later than September 12, 2014 at 5:00 p.m. The District advised that if no notice was given, it would rule



on the Permanent Restraining Order ("PRO") based on the submissions of the parties and the oral arguments given on September 10, 2014. The parties filed notices with the District Court advising that they did not intend to file any additional briefs or request oral argument.

During the pendency of the District Court matter, the Virgin Islands Attorney General filed a petition for rehearing in the VI Supreme Court requesting that the VI Supreme Court revisit its August 28, 2014 opinion and order. On September 12, 2014, the VI Supreme Court, by *per curiam* order, denied Fawkes's petition for rehearing, and further settling the issue of whether Hansen had a mandatory statutory right to cure her nomination papers. Our Supreme Court's Order denying Fawkes's petition for rehearing interprets the relevant statutes directly affecting the issues before the District Court, and it does not appear that the parties have notified the District Court of such order.

Fawkes returned Hansen's name to the 2014 General Election Ballot, and upon information and belief, on September 15, 2014, the St. Croix District Board approved the 2014 General Election Ballot inclusive of Hansen's name, in violation of this Court's order<sup>1</sup>.

**Argument:**

**I. The Superior Court's August 29, 2014 Order is Valid and Enforceable**

Courts have an inherent and statutory authority to ensure that there is compliance with their valid orders and that those orders are enforced. See, 5 V.I.C. § 1176 and Superior Court Rule 111. In the instant matter, the Supreme Court of the Virgin Islands entered an order remanding the above-captioned matter to the Superior Court with orders to grant Petitioner's petition and to remove Hansen from the General Election Ballot. See, *Exhibit 1*, Order and Memorandum Opinion of the Supreme Court of the Virgin Islands dated August 28, 2014. On

---

<sup>1</sup> The St. Croix Board Members voting in favor of returning Hansen's name to the ballot in violation of this Court's order were Rupert Ross, Raymond Williams, Lisa Harris-Moorhead, and Glenn Webster. This approval was apparently granted without the Board actually seeing the ballot they were approving.

August 29, 2014, the Superior Court of the Virgin Islands entered its order granting Petitioner's petition and ordering Fawkes to remove Hansen's name from the General Election Ballot. See, *Exhibit 2*, Superior Court of the Virgin Islands Order dated August 29, 2014. Both of these Orders are valid orders. Specifically, this Court's August 29, 2014 Order is valid and enforceable under 5 V.I.C. § 1176. The parties litigated the legal issues all the way to the Supreme Court of the Virgin Islands, and the issues were resolved in Petitioner's favor. In fact, Fawkes filed a Petition for Rehearing which was denied. See, *Exhibit 3*, Supreme Court of the Virgin Islands *Per Curiam* Order Denying Fawkes's Petition for Rehearing dated September 12, 2014. Therefore, the Order at issue is valid and remains enforceable by this Court.

**II. The Supervisor of Elections Caroline Fawkes Must be Held in Contempt for Violating the Superior Court's August 29, 2014 Order by Placing Hansen Back on the 2014 General Election Ballot.**

The Superior Court has the authority to enter orders to show cause and hold parties in contempt for any party's failure to comply and to disobey an order of the Court. Superior Court Rule 111 provides:

Where an order has been made directing a person to do or refrain from doing certain acts and it shall appear to the court that the offending party or parties have failed to comply with the order theretofore made, the court shall upon notice of the offending party or parties hear the matter in a summary manner and upon finding that the party or parties have wilfully violated terms of the order, may commit the offender or offenders to jail, place them on probation or fine them as shall seem to the court to meet and just.

Super. Ct. R. 111

In the instant matter, the Supreme Court ruled that Hansen's three convictions for wilful failure to file her income taxes were crimes involving moral turpitude, and therefore, she was ineligible for membership in the 31<sup>st</sup> Legislature. Thereafter, the Supreme Court ordered that the Superior Court, on remand, grant Petitioner's petition, set aside Hansen's nomination papers

filed in May 2014, and order Fawkes to remove Hansen's name from the general election ballot. See, *Exhibit 1* at 34. The Superior Court issued its order as directed by the Supreme Court. Fawkes initially complied with the Superior Court's order. However, Hansen, and other individuals, filed an action for a Temporary and Permanent Restraining Order in the District Court of the Virgin Islands ("District Court"). In the District Court action the parties argued that Hansen was entitled to be on the 2014 General Election Ballot because she had received a pardon from the Governor. In essence they argued that Hansen's pardon was retroactive. Fawkes filed a Petition for Rehearing in the Supreme Court. Before the Supreme Court could rule on the petition, the District Court granted Hansen's TRO, and ordered that Hansen be returned to the general election ballot because, in predicting what our Supreme Court would do, the District Court determined that Hansen had a mandatory "statutory right" to cure her nomination papers filed on September 4, 2014. See, *Exhibit 4*, District Court Order dated September 12, 2014 granting Hansen's Motion for TRO. In that same order the District Court correctly determined that a pardon has no retroactive effect to change ineligibility or disabilities previously existing. *Id* at 9-10. Subsequent to the District Court's order granting the TRO, our Supreme Court denied Fawkes's petition for rehearing and determined that Hansen did not have a mandatory statutory right to cure. In essence our Supreme Court maintained the validity of its ruling, and issued a clear directive to the District Court that its interpretation was incorrect.

The issue herein is whether Fawkes "willfully" violated this Court's order. Fawkes will more than likely argue that she did not willfully violate the Court's August 29, 2014 Order by placing Hansen back on the ballot because she was ordered by the District Court to do so. However, such an explanation on the surface seems sufficient to avoid contempt sanctions, but a proper examination into how the District Court order was procured gives a very different outlook.

**a. 18 V.I.C. § 410(a)(2) Prohibits the Acceptance and Recognition of Hansen's September 4, 2014 Nomination Papers to be Placed on the 2014 General Election Ballot Because the Nomination Papers Were Filed After the Statutory Filing Deadline**

Title 18 V.I.C. § 410(a)(2) provides that nomination papers must be filed by the second Tuesday in May of the general election year. For the 2014 general election that date was May 13, 2014. As the District Court correctly pointed out, Hansen's September 4, 2014 nomination papers presented to Fawkes were "new" papers. However, the District Court was incorrect in determining that they were valid. Hansen's September 2014 nomination papers were filed outside of the statutory filing deadline, and therefore, invalid and not properly before Fawkes or the St. Croix District Board. For the District Court to find that Hansen's September 4, 2014 papers were new and valid, and properly filed, the District Court would have to expressly or implicitly extend the filing deadlines set forth in 18 V.I.C. § 410(a)(2), which it is not authorized to do. In so doing, the District Court would be improperly invalidating the valid orders of the Supreme Court of the Virgin Islands and the Superior Court of the Virgin Islands, which it has no authority to do for purely local matters. Section 410(a)(2) is a local statute, enacted by the Legislature of the Virgin Islands under its authority to enact the election laws of the Virgin Islands. Statutory filing deadlines are purely a local decision, and must be respected by the federal courts. Plaintiffs never challenged § 410(a)(2), and therefore, because Fawkes was complying with the valid orders of the Supreme Court of the Virgin Islands and Superior Court of the Virgin Islands, as well as § 410(a)(2) filing deadlines requirements Hansen has no legal standing to challenge Fawkes refusing to return her name to the 2014 general election ballot and to enforce the statutory filing requirements.

The record is clear that Hansen's nomination papers filed on May 13, 2014 were set aside and Hansen did not seek leave of court to obtain additional time to cure those papers, assuming

she could. To that end, the May 13, 2014 nomination papers are void *ab initio*. Without seeking leave of court to cure within the applicable time prescribed by statute, Hansen just simply sought to file new nomination papers with the Supervisor of Elections on September 4, 2014, which was not accepted. Because Hansen's May 13, 2014 nomination papers were set aside and she did not seek leave of court to cure, her September 4, 2014 nomination papers are invalid because it was filed after the statutory filing deadline. Therefore, there is nothing to cure.

Fawkes never accepted Hansen's September 4, 2014 filing. Fawkes simply advised Hansen by letter that, pursuant to the orders of the Supreme Court of the Virgin Islands and the Superior Court of the Virgin Islands, her name was removed from the 2014 General Election Ballot. See, *Exhibit 6*, Fawkes's Letter to Hansen dated September 2, 2014. In fact, Fawkes was under no authority to accept Hansen's September 4, 2014 nomination petition papers because the statutory deadline for filing nomination papers for the 2014 General Election was May 13, 2014, a date which had long passed, and cannot be extended without legislative action.

**b. Collusion Among the Respondent and Hansen**

It appears from the indisputable facts of this case that there was some collusion between Respondents to willfully violate this Court's order and to hide behind a favorable District Court order. That kind of conduct is currently referred to as collusion, and such collusive actions are disfavored. Collusive Actions are defined as follows:

A collusive action is an action not founded upon an actual controversy between the parties to it, but brought for the purpose of securing a determination of a point of law for the gratification of curiosity or to settle rights of third persons not parties.

Collusion is the defined in pertinent part as follows:

An agreement between two or more persons . . . to obtain an object forbidden by law. It implies the existence of fraud of some kind, the employment of fraudulent means or of lawful means for the

accomplishment of an unlawful purpose. A secret combination, conspiracy or concert of action between two or more persons for fraudulent or deceitful purpose[s].

See, Black's Law Dictionary, 6<sup>th</sup> Ed.

It is apparent that both Fawkes and Hansen disagreed with the ruling of our Supreme Court, and the subsequent order by this Court to set aside Hansen's nomination papers filed in May 2014, and to remove her name from the general election ballot. It is the course of events that took place after which should give this Court pause.

First, on the date that this Court issued its Order setting aside Hansen's May 2014 nomination papers and order the removal of her name from the General Election Ballot, Hansen's attorney wrote to Fawkes and said that they had been in receipt of this Court's order, and would await a notice of defect so that Hansen could cure her nomination papers within three days. See, *Exhibit 5*, Letter from Rohn to Fawkes dated August 29, 2014. On August 31, 2014, the Governor issues a press release advising that Hansen's counsel had publicly requested a pardon, and that he instructed the V.I. Attorney General to research the issue of the pardon and the **likelihood of Hansen being returned to the ballot**. On September 2, 2014, Fawkes writes to Hansen and advises her that she has been deemed ineligible, and therefore, disqualified and her name would be removed from the ballot as per the Supreme Court order. See, *Exhibit 6*. Hansen picked up the correspondence personally. On September 3, 2014, the V.I. Attorney General issued his legal opinion and determined that the Governor had the authority to pardon Hansen, and then further opined that the pardon was retroactive and Hansen could be returned to the general election ballot. See, *Exhibit 7*, V.I. Attorney General Legal Opinion. On September 3, 2014, the Governor issues a pardon to Hansen, and on September 4, 2014, Hansen then delivers to the V.I. Election Office in St. Croix new nomination papers along with her pardon. Fawkes never formally accepts the September 4, 2014 nomination papers. Fawkes advised



Hansen that she was not going to put her name back on the general election ballot unless she receives a new court order. It is this position that Petitioner believes set the subsequent facts into motion.

On September 7, 2014, certain plaintiffs not a party to the instant action files a TRO/PRO in the District Court, and on September 8, 2014, Hansen files a substantially identical Complaint in the District Court. In the complaint, Hansen and the other plaintiffs argue that their constitutional rights are being violated, that Hansen's due process rights are violated, and that her pardon is retroactive, and therefore, she must be returned to the general election ballot. It must be noted that at no time did Hansen ever return to this Court to seek a cure with her newly acquired pardon. What happens is Fawkes does nothing to defend herself in the District Court action and proffers the identical arguments given by Hansen and the other Plaintiffs thereby putting into question whether there was even an actual case or controversy. In fact, Fawkes has not even filed an answer in the District Court proceedings and did not even lodge as a basic defense the valid court orders from the Supreme and Superior Courts. Fawkes simply sits back and does nothing. It is clear that the desired outcome of the Respondent's participation in the District Court case was to settle the rights of Hansen to be placed on the 2014 General Election Ballot despite having a clear and final order from our Supreme Court and the Superior Court that Hansen is to be removed from the ballot. While Fawkes may attempt to argue that it was her lawyers who made the argument before the Court, that is a red herring because Fawkes knew what she was required to do by the Court's orders and yet participated in the collusion to violate this Court's order. This violation of the Courts' orders is continuing and will continue unless this Court brings it to an end by holding Fawkes in contempt for her willful failure to violate this Court's order.

**Conclusion:**

The fact is this Court's order remains a valid order to which Fawkes must comply, and the Supreme Court's denial of Fawkes's petition for rehearing underscores this point. The fact that Fawkes sat by and did nothing to defend her actions, but adopted the arguments of Hansen and the other Plaintiffs, individually and through her legal counsel, is indicative of collusion especially since Fawkes was not without relevant and strong arguments in opposition to the complaints for TRO/PRO filed in the District Court filed by Hansen and the other plaintiffs. This failure by Fawkes to assert any defense in the District Court proceedings is tantamount to willfulness, and thus is subject to contempt. Moreover, the fact that Hansen's September 4, 2014 nomination papers violate § 410(a)(2)'s statutory filing deadline further supports the need for an order of contempt since neither Fawkes, the Joint Boards of Elections, the St. Croix Board of Elections, nor the District Court have the authority to extend the statutory filing deadline. Accordingly, Petitioner respectfully requests that this honorable Court enforces its August 29, 2014 Order ordering Fawkes to remove Hansen from the 2014 General Election Ballot, and that this Court order Fawkes to show cause why she should not be held in contempt of court for violating this Court's order. Further, in light of the emergency nature of this motion, Petitioner respectfully requests that the Court schedule this hearing forthwith.

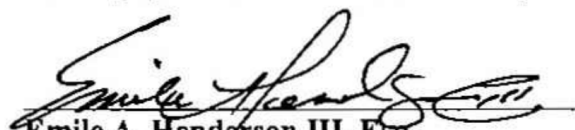
Respectfully Submitted:

LAW OFFICES OF YVETTE D. ROSS-EDWARDS

*Attorneys for Petitioner Adelbert M. Bryan*

Dated: September 18<sup>th</sup>, 2014

By:

  
Emile A. Henderson III, Esq.  
(53-A) 429 King Street, Ste. 8  
Frederiksted, VI 00840  
Tel (340) 772-4444 // Fax (340) 772-4125  
Email: [office@rosshendersonlaw.com](mailto:office@rosshendersonlaw.com)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on September 19<sup>th</sup>, 2014, I caused a true and correct copy of the foregoing **Petitioner's Motion for Enforcement of Judgment and for Contempt Sanctions** to be served upon the following:

Via Hand Delivery

**Vincent A. Frazer, Esq.**  
Attorney General of the Virgin Islands  
Department of Justice  
6040 Castle Coakley  
Christiansted, St. Croix 00820  
**Attn: Angela K. Polk, AAG**

Via Hand Delivery

**Lee J. Rohn, Esq.**  
Law Offices of Lee J. Rohn & Associates LLC  
1101 King Street  
Christiansted, St. Croix 00820

Via Hand Delivery

**Caroline Fawkes**  
Supervisor of Elections  
P.O. Box 1499  
Kingshill, St. Croix 00851

Annalisa M. Ponce