

Not for Publication.

**IN THE SUPREME COURT OF THE VIRGIN ISLANDS**

IN RE: PRO HAC VICE ADMISSION OF )  
DUSTON K. McFAUL ) S. Ct. BA. No. 2008-092  
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Considered and Filed: March 2, 2009

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

**ORDER OF THE COURT**

**PER CURIAM.**

**THIS MATTER** is before the Court due to a motion for full panel review<sup>1</sup> counsel for Dawn Prosser (“Prosser”) filed with this Court on January 26, 2009. In her motion, Prosser requests that this Court reconsider its January 22, 2009 order granting *pro hac vice* admission to Duston K. McFaul (“McFaul”), a Texas attorney who is co-counsel for the plaintiff in the underlying Superior Court action in which Prosser is the defendant.<sup>2</sup>

Benjamin A. Currence, an active member of the Virgin Islands Bar, filed a motion for the *pro hac vice* admission of Attorney McFaul with the Superior Court on October 21, 2008, and served Prosser’s counsel with a copy of that motion. On November 20, 2008, the Superior Court forwarded Attorney Currence’s *pro hac vice* motion to this Court. On December 3, 2008, this Court issued a letter, which was also served on Prosser’s counsel, informing Attorney Currence

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<sup>1</sup> Although counsel styled this filing as a “Motion for Reconsideration,” this Court’s rules contain no provision allowing for such a motion. However, because Prosser’s counsel seeks review of an order entered by a single justice, we shall construe counsel’s filing as a motion for review by the entire Court pursuant to Supreme Court Rule 21(c).

<sup>2</sup> *Virgin Islands Telephone Corporation v. Dawn Prosser*, Civ. No. 103/2008.

that Attorney McFaul's application contained several technical deficiencies that required revision. Attorney Currence cured these defects on January 15, 2009, and this Court, through an order entered by a single justice, admitted Attorney McFaul *pro hac vice* on January 22, 2009. During this period Prosser's counsel never submitted an opposition to Attorney Currence's motion.

In her January 26, 2009 motion for review, Prosser argues—for the first time—that this Court should order Attorney McFaul to amend his *pro hac vice* admission questionnaire to state whether his law firm, Vinson & Elkins, has paid the Virgin Islands gross receipts tax. Prosser further contends that Supreme Court Rule 201, which governs *pro hac vice* admissions, should be read to limit the total number of appearances by attorneys affiliated with a particular law firm to three and, because other attorneys from Vinson & Elkins have allegedly been granted *pro hac vice* admission in three or more matters, this Court should have denied Attorney McFaul's *pro hac vice* application.

Supreme Court Rule 21 authorizes “the Chief Justice, or any other justice designated by the Chief Justice” to “entertain and . . . grant or deny any non-dispositive motion or other pretrial matter. . . .” and provides that “[t]he action of a single justice may be reviewed by the Court or the appellate panel.” V.I.S.CT.R. 21(c). *See also* 4 V.I.C. § 31(b) (authorizing this Court to delegate to a single justice the power to determine procedural matters). Rule 21 further provides that “[i]n the absence of a timely response, the Court may treat a motion . . . as uncontested.” V.I.S.CT.R. 21(g). Although not expressly stated in Rule 21, other courts have consistently held that “[a]n issue not raised before the single justice is deemed waived” upon review by the full Court. *Board of Overseers of the Bar v. Mangan*, 763 A.2d 1189, 1194 (Me. 2001); *see also Kaplan v. Board of Public Accountancy*, 897 N.E.2d 67, 71 (Mass. 2008) (refusing to consider

argument not raised before single justice that is made for the first time in review to the full Supreme Judicial Court); *cf. Peter v. Hess Oil Virgin Islands Corp.*, 910 F.2d 1179, 1181 (3d Cir. 1990) (refusing to consider argument raised for the first time in a petition for rehearing when counsel provided “no legitimate excuse for failing to raise th[e] argument in a timely manner.”).

Although Prosser purports that this Court’s January 22, 2009 order “was entered with impressive speed of only seven days” after Attorney Currence cured his original motion’s technical deficiencies, Prosser does not acknowledge that Attorney Currence originally filed—and served on Prosser’s counsel—his motion to admit Attorney McFaul *pro hac vice* on October 21, 2008. Given that the technical deficiencies in Attorney Currence’s initial motion were unrelated to Prosser’s purported points of error, it is unclear why Prosser could not have submitted an opposition to Attorney Currence’s motion during the three month period between the filing and service of the motion and the issuance of this Court’s order granting the motion. Because Prosser had ample opportunity to contest Attorney Currence’s motion but failed to do so, her counsel may not now, for the first time, argue that the motion was granted in error. *Mangan*, 763 A.2d at 1194. Accordingly, the premises having been considered, it is hereby

**ORDERED** that Prosser’s motion for full panel review is **DENIED**. It is also

**ORDERED** that this Court’s January 22, 2009 order is **RE-AFFIRMED**. It is also

**ORDERED** that copies of this Order be served on the parties.

**SO ORDERED** this 2nd day of March, 2009.

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