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iled August 14, 1997

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 96-7660

ALAN D. SMITH; KATHLEEN MACKAY;
ADAM G. CHRISTIAN; BARBARA WEATHERLY;
APPELLEES
DE VOS & CO.; VIRGIN ISLANDS BAR ASSOCIATION

v.

CLEMENT MAGRAS, INDIVIDUALLY AND IN HIS
CAPACITY AS COMM. OF DEPT. OF LICENSING AND
CONSUMER AFFAIRS

CLEMENT MAGRAS & *GOVERNMENT OF THE
VIRGIN ISLANDS
APPELLANTS

*(pursuant to Rule 12(a) F.R.A.P.)

On Appeal From the United States District Court
of the Virgin Islands
Division of St. Thomas
(D.C. Civ. No. 94-cv-00012)

Argued: April 8, 1997

Before: BECKER, ROTH and WEIS,
Circuit Judges.

(Filed August 14, 1997)

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OPINION OF THE COURT

BECKER, Circuit Judge.

The Virgin Islands legislature has enacted a business licensing scheme pursuant to which every person "wishing to engage in any business, occupation, profession or trade" listed in the statute is required to obtain a license and pay an annual license fee. V.I. Code. Ann. tit. 27, § 301(a) (1997). One of the listings is "Attorney," for which the annual fee is \$500. See *id.* § 302. The question presented in this appeal is whether the license fee must be paid by attorneys whose sole practice (and income) is as law firm employees. The obligation of law firm partners and of sole

practitioners to obtain a license and pay the fee is unquestioned.

The plaintiffs are four attorneys who are members of the Virgin Islands Bar, a law firm, and the Virgin Islands Bar Association (collectively, "the plaintiffs"). In September 1992, defendant Clement Magras, Commissioner of the Virgin Islands Department of Licensing and Consumer Affairs ("Commissioner"), informed the plaintiffs that they were required to obtain a business license from his department in order to practice law in the Virgin Islands. After some correspondence which failed to resolve the matter, the plaintiffs brought suit in the Territorial Court of the Virgin Islands. That court issued an injunction against collection of the fees; the Appellate Division of the District Court of the Virgin Islands affirmed. The Territorial and District Courts concluded that, under the statutory scheme, the obligation to obtain a license runs only to the partners of the firm for which the non-owner attorneys work. The appellate panel grounded this interpretation on its reading of the statutory language; on the Commissioner's historical interpretation of the statute, to which it apparently gave some deference; and on its belief that application of the licensing provisions to non-owner attorneys might, in view of the sanctions available to the Commissioner for non-payment of the license fees, somehow trench upon the power of the courts to regulate the practice of law.

Finding the statutory language quite clear and susceptible to no interpretation other than that all attorneys, whether or not employed by others, are subject to the license requirement and fee, we reverse. We therefore need not reach the administrative interpretation issue. We also summarily reject the plaintiffs' argument that the application of the licensing scheme to all attorneys would violate the Equal Protection Clause. Further, given the concession by the Commissioner that he would not employ his power under the licensing scheme to interfere with the judiciary's role in regulating the professional conduct and competence of attorneys, and given the absence of any pending or threatened action that might involve such interference, we have little difficulty with the contention

that the licensing scheme infringes the power of the courts to regulate the bar. In the course of discussing the power of the courts to regulate the bar, we hold, for the first time, that the principle of separation of powers applies to the coordinate branches of the Virgin Islands government.

I. THE LICENSING STATUTE

Consideration of the contentions of the parties requires that we set forth the relevant text of §§ 301 and 302. It is as follows:

§ 301. Licenses required; application forms; qualifications and limitations

(a) Every person or association wishing to engage in any business, occupation, profession, or trade listed in section 302 of this chapter, as a condition precedent to engaging in any such business, occupation, profession, or trade, shall apply in writing to and obtain from the Commissioner of Licensing and Consumer Affairs (referred to as the "Commissioner" in the remainder of this chapter) a license to engage in or to conduct such business, occupation, profession or trade.

(b) Applications for licenses under this chapter shall be made on forms prescribed and furnished by the Commissioner. As part of or in connection with any application the applicant shall furnish information concerning his identify, personal history, experience, business record, purposes, record of any conviction of any offense which is a felony or crime involving moral turpitude in the jurisdiction where the offense occurred, and any other pertinent facts that the Commissioner may reasonably require.

In the case of corporations or partnerships the preceding requirements shall be applicable to all of the shareholders or partners. . . .

(c) If the applicant is a partnership or a corporation, the application shall designate each member, officer, or employee who will exercise the powers to be conferred by the license upon such partnership or corporation. The Commissioner may require any such member,

officer or employee to furnish him with the information required of applicants under subsection (b) of this section.

. . . .

§ 302. Same; business, occupations, professions and trades covered; fees

(a) The following annual license fees are made applicable to and shall be levied upon all persons and associations engaged in the designated businesses, occupations, professions and trades in the Virgin Islands of the United States:

. . . .

Attorney [\$] 500

. . . .

We will refer to these provisions throughout our discussion. We also attach the schedule contained in § 302 as an appendix.

II. PROCEDURAL HISTORY; THE APPELLATE PANEL OPINION

In September 1992, the Commissioner issued letters to the plaintiffs informing them that they were required to obtain business licenses pursuant to the Virgin Islands licensing statute. The plaintiffs responded that, as employees of law firms whose partners or shareholders were properly licensed, there was no requirement that they be licensed individually. The plaintiffs requested a hearing. More correspondence followed, culminating in the Commissioner's threats to publish the names of the plaintiffs not in compliance with the licensing statute and to refer the matter for possible criminal prosecution.

The plaintiffs brought suit in the Territorial Court of the Virgin Islands. The Territorial Court issued a permanent injunction enjoining the Commissioner from collecting license fees from non-owner attorneys who work at law firms. The Commissioner appealed.

In affirming the order of the Territorial Court, the Appellate Division of the District Court proceeded from a rendering of the statute that highlighted certain words and phrases. In § 301(a), the appellate panel underscored "[e]very person or association." In § 301(b), it stressed the provision that "[i]n the case of corporations or partnerships the preceding requirements shall be applicable to all of the shareholders or partners." And, in § 301(c), it highlighted the following sentence:

If the applicant is a partnership or a corporation, the application shall designate each member, officer, or employee who will exercise the powers to be conferred by the license upon the partnership or corporation.

(emphasis added by Appellate Division).

The panel then stated:

The only reasonable, logical and consistent inference we draw from the highlighted words is that the license is to be granted to the partnership or corporation itself, not to "each member, officer or employee who will exercise the powers of the license."

The panel then turned to the interpretation given the statute by the administrative agency charged with its enforcement. The panel looked to the form distributed by the Commissioner to all license applicants, which, inter alia, requests the applicant to check off:

"TYPE OF ORGANIZATION" it is: a sole proprietorship, reflecting the word "person" used in subsections 301(a) & (b) and 302(a); or a corporation, a partnership, a joint venture, reflecting the word "association" in those same subsections.

In the Appellate Division's view:

The only mention of employee is the application's request for the total estimated number of employees; it does not require the applicant to identify these employees by listing their names and/or positions. None of the remaining requirements on the application form have any relevance to the question whether separate license fees can be taxed to attorney-employees of private law firms.

The court also noted that, prior to Commissioner Magras's September 1992 letters, the Commission had not required an attorney to apply for and pay for a separate business license unless the attorney had an ownership interest in the law partnership or corporation that employed him or her. It also pointed out that, although "Travel Ticket Agent" is listed as an occupation required to obtain a license, the department does not require a travel agent working as an employee of a travel agency to pay a separate license fee. The court analogized the non-owner attorney in a law firm to an employee of a travel agency and concluded that the two should be treated similarly. The court opined that a non-owner attorney in a law firm is not conducting business. Rather, the court reasoned, a non-owner attorney is working on behalf of the firm, which is conducting business.

Finally, the court cautioned that the provisions of the licensing scheme allowing the Commissioner to base licensing decisions on the moral character or misconduct of the licensee violated the principle of separation of powers. Because such provisions effectively regulated attorneys in the Virgin Islands, the court reasoned, they impermissibly allowed the Commissioner, at least potentially, to operate in areas under the exclusive control of the judiciary.

The plaintiffs' arguments before us have essentially tracked the appellate division's position. In addition, they contend that applying the licensing scheme to non-owner attorneys would deny such attorneys equal protection of the laws. That is so, they submit, because these attorneys would be required to pay the licensing fee while other, allegedly similarly situated employees would not be so required.

The Commissioner appeals from the order of the appellate division. The Commissioner argues that the plain language can be interpreted only to mean that the licensing requirements apply to all attorneys, and, in the alternative, that any ambiguity in the statute should be resolved in favor of the agency charged with its interpretation, which, in this case, determined that the statute applies to all attorneys. The Territorial Court had original jurisdiction pursuant to V.I. Code Ann. tit. 4, § 76(a) (Supp. 1994). The

Appellate Division had jurisdiction over the appeal from the Territorial Court pursuant to V.I. Code Ann. tit. 4, § 33 (Supp. 1994). We have jurisdiction over the appeal of the final order of the appellate division pursuant to 48 U.S.C. § 1613a(c).

We review the grant of a permanent injunction for abuse of discretion. See International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW v. Mack Trucks, Inc., 820 F.2d 91, 94-95 (3d Cir. 1987). "An abuse of discretion exists where the district court's decision rests upon a clearly erroneous finding of fact, an errant conclusion of law, or an improper application of law to fact." Id. at 95. Statutory construction is a legal question, over which we exercise plenary review. See Air Courier Conference of America/Int'l Comm. v. United States Postal Serv., 959 F.2d 1213, 1217 & n.3 (3d Cir. 1992). Therefore, in the context of the present appeal, if, after our plenary review, we conclude that the Territorial Court erred as a matter of law in interpreting the licensing statute, we may say that it did not act within its discretion in issuing the permanent injunction.

III. DISCUSSION

A. Professional Licensing Schemes in General

Licensing schemes similar to that at issue here are not uncommon. More often than not, these schemes, by their very terms, apply to attorneys. Their form varies: some operate statewide, others are local enactments; some merely generate revenue by way of fees, others include regulatory provisions that govern conduct. Not surprisingly, there is a substantial body of state law governing such arrangements. See David B. Sweet, Annotation, Validity of State or Municipal Tax or License Fee Upon Occupation of Practicing Law, 50 A.L.R. 4th 467 (1986); 9 Beth A. Buday & Julie Rozwadowski, McQuillin, The Law of Municipal Corporations §§ 26.128, 26.130 (3d ed. 1995). Often, attorneys subject to these schemes will challenge them on numerous grounds, basing their challenges on federal and state constitutional or statutory law. Although we have

undertaken no systematic study, our research indicates that, for the most part, these arrangements are largely unobjectionable and are ordinarily approved by state courts.

Without attempting our own synthesis of the case law, we offer some representative examples of cases addressing such schemes. In Sterling v. City of Philadelphia, 106 A.2d 793 (Pa. 1954), an oft-cited case, the Supreme Court of Pennsylvania upheld a city ordinance that established a mercantile tax that applied to attorneys. In so doing, the court reasoned that a pure revenue-raising measure does not infringe on the power of the state courts to regulate attorneys because such a measure does not affect the rights and duties of an attorney in carrying out his profession. See *id.* at 796-98. It stated further that "the privilege of practicing law carries with it no exemption from the duties of citizenship, including the sharing with all others the expense of government, national, state and municipal." *Id.* at 796. Courts reaching a similar conclusion include Kradolfer v. Smith, 805 P.2d 1266 (Mont. 1990), Mire v. City of Lake Charles, 540 So.2d 950 (La. 1989), Gleason v. City Council of Augusta, 251 S.E.2d 536 (Ga. 1979), and Lublin v. Brown, 362 A.2d 769 (Conn. 1975).

Courts have taken a different view of measures that include regulatory provisions placing conditions on the practice of law. For example, in Sexton v. City of Jonesboro, 481 S.E.2d 818 (Ga. 1997), the Supreme Court of Georgia invalidated a municipal ordinance that required, as a precondition to engaging in the practice of law, the payment of a fee. Although it recognized the right of local governments to tax attorneys, the court held that this particular measure was regulatory and therefore infringed on the exclusive power of the courts to regulate attorneys. See *id.* at 820. At least one court has even invalidated a measure that was non-regulatory and only revenue-raising. In Sharood v. Hatfield, 210 N.W.2d 275 (Minn. 1973), the Supreme Court of Minnesota held that a statute that diverted registration fees collected statewide from attorneys to general treasury funds improperly infringed on the constitutionally provided, exclusive power of the courts to regulate attorneys. See *id.* at 279-82.

Sexton and Sharood notwithstanding, it is the rare case in which licensing schemes are found infirm. See generally, Sweet, supra §§ 11-13. On the contrary, such schemes are routinely upheld, even in the face of challenges based on state constitutional law.

B. Plain Language

We begin our analysis by examining the relevant language of the Virgin Islands statute. The general standard for statutory interpretation is well known and not in dispute here. The "first step in interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case." Robinson v. Shell Oil Co., ___ U.S. ___, 117 S. Ct. 843, 846 (1997). If so, our inquiry is at an end. See id. Of course, interpretation of a statute involves the examination of the statute as a whole. See id. In that sense, we must endeavor to give each word of the statute operative effect. See Walters v. Metropolitan Educ. Enters., ___ U.S. ___, 117 S. Ct. 661, 664 (1997). In other words, "[s]tatutory construction `is a holistic endeavor.'" United States Nat'l Bank of Or. v. Independent Ins. Agents, ___ U.S. ___, 113 S. Ct. 2173, 2182 (1993) (quoting United Savings Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 371 (1988)).

In our view, the language of the statute in dispute is entirely plain. Section 301 requires "[e]very person or association wishing to engage in any business, occupation, profession, or trade listed in section 302" to obtain a license to do so. V.I. Code Ann. tit. 27, § 301(a) (1997) (emphasis added). Section 302 states that the license fee requirement is "made applicable to and shall be levied upon all persons and associations engaged in the designated businesses, occupations, professions and trades." Id. § 302 (emphasis added). "Attorney" is listed in § 302. See id. Therefore, the plain language of the statute unambiguously states that every individual who wishes to practice as an attorney must obtain a license.¹ We believe the case to be that simple.

1. The statute exempts attorneys who work for the government. See V.I. Code Ann. tit. 27, § 306 (1997). We have earlier held that the exemption is valid and does not violate the principle of equal protection. See Hollar v. Government of the Virgin Islands, 857 F.2d 163, 171 (3d Cir. 1988).

We also note that the statute distinguishes between instances in which an entity is potentially subject to a license and those in which individuals, including employees, are potentially subject to a license (depending on whether the entity or individual is "engaged in" the listed activity). For example, because "[b]aby sitting service" is listed in § 302 as an entity, i.e., the relevant licensee is the "service" as an entity, only the service itself, and not the employees of the service, would be subject to the licensing requirement. By contrast, because "[a]ttorney" is listed in § 302 as an individual, each individual attorney is subject to the licensing requirement, whether he or she is an employee or not. In certain circumstances, the statute also requires a license of both the entity and the employees. For example, § 302 requires a license of a "[b]arber shop" and of each "[b]arber," "[b]arber apprentice," and "[b]arber temporary." In short, the distinctions that the Virgin Islands legislature drew in § 302 strongly suggest that the legislature intended to require licenses of entities in some instances, of employees of entities in others, and of both entities and employees in still others.² By employing the term "[a]ttorney," the legislature appears to have intended to license attorneys as individuals.

The plaintiffs only response to the foregoing is to argue that this interpretation cannot be reconciled with the language of other provisions of the licensing statute. In particular, they submit that these other provisions (highlighted supra at part I) make it clear that in corporate or partnership settings, only the corporation or partnership, and not the employees, need obtain a license. Because non-owner attorneys in a law firm are mere employees, the plaintiffs reason that these other provisions exempt non-owner attorneys from the licensing requirements. We disagree.

The plaintiffs point first to the second paragraph of § 301(b), which governs the information a corporation or

2. It is unclear whether the Commissioner has enforced the licensing statute against all the employees who may be subject to its requirements. At all events, a claim of impermissible selective enforcement has not been raised and we do not reach that issue.

partnership must submit with an application for a license. Under that paragraph, when a corporation or partnership applies for a license, "all of the shareholders or partners" must submit certain information along with the corporation's or partnership's application. *Id.* § 301(b). Because § 301(b) only requires information from "shareholders or partners," the plaintiffs submit that non-shareholders and non-partners are exempt from the licensing requirements altogether. The plaintiffs read too much into this provision. The second paragraph of § 301(b) governs, by its very terms, only the application of corporations or partnerships. It does not govern individual applications at all.

We note that requiring non-shareholders and non-partners to submit information along with the corporation or partnership for whom they work would make little sense. Such individuals have no de jure say in the governance of the applicant corporation or partnership, so the licensing body should have no interest in non-shareholders or non-partners when determining whether to license a corporation or partnership qua corporation or partnership. Excluding non-shareholders and non-partners from the requirements of the second paragraph of § 301(b), then, is merely a recognition of the internal structures of corporations and partnerships. That exclusion says nothing about whether a non-shareholder or a non-partner need make his own application for a license.

The plaintiffs, however, read § 301(c) as bolstering their argument as to the second paragraph of § 301(b). Section 301(c) requires that a corporation or partnership "designate each member, officer, or employee who will exercise the powers to be conferred by the license upon such partnership or corporation." *Id.* § 301(c). Each designee may then be required to submit certain information along with the application of the corporation or partnership. *See id.* The plaintiffs contend that this language does not mean that the designated "member, officer, or employee" is subject to the licensing requirements. That may be so, but the argument does not "advance the ball" in this case. Nothing in § 301(c) states that "each member, officer, or employee" is not subject to the licensing requirements.

Moreover, like the second paragraph of § 301(b), § 301(c) only applies to applications of corporations or partnerships; it says nothing about applications of individual persons. And, again like the second paragraph of § 301(b), § 301(c) is merely a recognition of governance in corporations or partnerships. A designated "member, officer, or employee," by § 301(c)'s definition, will be exercising power within the corporation or partnership. Therefore, the licensing body may have some interest in that "member, officer, or employee" when considering whether to license the corporation or partnership. In short, the fact that the licensing body may require § 301(c) designees to submit certain information is simply inconclusive as to whether those designees, or any other individual, are subject to the licensing requirements.³

3. The plaintiffs also argue that our interpretation would render § 303(a) meaningless in certain circumstances. Section 303(a) requires that the licensing body forward applications for licenses to agencies in the Government of the Virgin Islands charged with historic preservation and environmental protection so that those agencies can examine the application for "construction and site acceptability." Id. § 303(a). Because it would make little sense to review the applications of non-owner attorneys with respect to "construction and site acceptability," the plaintiffs reason that non-owner attorneys are not subject to the licensing requirements. To the extent that this argument has any force, and we think it does not, it seems totally immaterial for it proves too much. By their reasoning, the licensing requirements would not apply to the numerous persons or associations, listed in § 302, who would not necessarily construct a building nor even need a building in which to operate their business, engage in their occupation, practice their profession, or carry out their trade. If the plaintiffs are correct in their argument about § 303(a), then the licensing requirements would apply to none of these businesses, occupations, professions, or trades. Section 303(a) does not exempt a person or association from the licensing requirements simply because he, she, or it is not concerned with the construction or siting of a building.

The plaintiffs further argue that § 303b(a) supports their position. Section 303b(a) requires that "[a]ny entity licensed pursuant to this chapter shall notify the Employment Security Agency, Virgin Islands Department of Labor, of its intent to fill an existing position, now vacant or soon to become vacant, or a new previously unfilled position." Id. § 303b(a). Because non-owner attorneys are in no position to hire

The plaintiffs further claim that our reading of the statute would produce, as they describe it, the absurd result that every individual employee in every venture in the Virgin Islands would be subject to the licensing requirements. We believe the plaintiffs incorrectly characterize our reading of the statute. As we have already noted, the statute, by its very terms, makes clear that not all employees are subject

to the licensing requirements. Further, whether an individual is subject to the licensing requirement depends on whether the individual is "engaged in the designated business[], occupation[], profession[] and trade[]." Id. § 302 (emphasis added). The issue here, then, is whether the non-owner attorneys are "engaged in" the profession of "[a]ttorney," and it is clear beyond doubt that the non-owner attorneys are "engaged in" in the profession of "[a]ttorney."

As practicing attorneys in the Virgin Islands, the plaintiffs must be active members of the Virgin Islands bar. See V.I. Terr. Ct. R. 305(b). As active members of the Virgin Islands bar, the plaintiffs must be engaged in the practice of law. See id. at 306(a). Therefore, the fact that the plaintiffs are practicing attorneys leads ineluctably to the conclusion that they are engaged in being attorneys. See Mayor & Council of Wilmington v. Dukes, 157 A.2d 789, 793 (De. 1960) (classifying employee physicians as carrying out the medical profession); Brinton v. City of Jonesboro, 320 S.W.2d 272, 273 (Ark. 1959) (classifying employee attorneys as carrying out the legal profession).⁴ This conclusion is not

anyone, the plaintiffs reason that non-owner attorneys must not be subject to the licensing requirements. This argument is also flawed. First, by its very terms, § 303b(a) only applies to entities; it does not apply to individual persons. Second, the argument similarly proves too much. By the reasoning of the plaintiffs, § 303b(a) would exempt numerous businesses, occupations, professions, and trades listed in § 302 from the licensing requirements. Just because these businesses, occupations, professions, or trades -- by their very nature -- will not be hiring any employees does not mean that § 303b(a) exempts them from the licensing requirements. If § 303b(a) did work such exemptions, then these businesses, occupations, professions, and trades would be read out of § 302.

4. The plaintiffs point to language in § 306, the exemption for government attorneys, see supra note 1, for further support of their

affected by the fact that the attorneys at issue in this case are non-owner attorneys in a law firm.⁵ Further, that non-owner attorneys at law firms may be "engaged in" the profession of "[a]ttorney" does not determine whether other employees, in other fields, are "engaged in" a listed business, occupation, profession, or trade.⁶

In sum, the plain language of the statute renders it applicable to non-owner attorneys employed by law firms.⁷

position. They note that the section will not apply if the exempted individual is "engaged in the conduct of business pursuits for profit." V.I. Code Ann. tit. 27, § 306 (1997). According to the plaintiffs, such language implies that the licensing scheme applies only to the business entity and not to employees, because it is the business entity that is seeking the profits. We believe such language implies exactly the opposite. If the licensing scheme applied only to business entities and not to employees, there would be no need for the exemption in the first place; government attorneys are mere employees.

5. We caution that our holding extends only to those non-owner attorneys of law firms who work in the Virgin Islands and have been admitted to the Virgin Islands bar to practice before the local courts by the regular admission rules. Our holding does not address those attorneys who have been admitted to the Virgin Islands bar pro hac vice or by the special admission rules, who do not ordinarily work in the Virgin Islands, or who have been admitted in the Virgin Islands only to practice before the District Court of the Virgin Islands. We do not reach the question whether such attorneys are "engaged in" being attorneys in the Virgin Islands.

6. The kernel of Judge Weis' argument is that, while the statute, particularly § 302(b), seemingly covers virtually everyone in the work force, the (inconsistent) administration of the statute negates that view, and counsels that employees are simply not covered. As we have noted above, see supra, note 2, the matter of selective enforcement is not before us. We do note, however, that Judge Weis reads too much into the catch-all provision. As we understand the reference to "[a]ny person or association engaged in a business, occupation, profession, or trade" not listed or not covered by any other provision of this Code, who is to obtain an annual license at a fee of \$100, it deals with a new occupation that did not previously exist (e.g. "Internet Counsultant"), or an occupation not at all mentioned in § 302(a), either on its own, or as part of an entity.

7. Our conclusion about the plain language of the statute effectively disposes of the argument, advanced by the Commissioner, that we must

C. Separation of Powers

The plaintiffs contend that applying the licensing requirements to them would violate the principle of separation of powers. They argue that the judicial branch of the Virgin Islands enjoys exclusive control over the regulation of the practice of law in the Virgin Islands. Because the licensing scheme is itself a form of regulatory control, the plaintiffs continue, imposing that scheme on attorneys would allow executive agencies to regulate attorneys and thereby to encroach on the judiciary's domain. Of particular concern to the plaintiffs are those provisions of the licensing statute that allow executive agencies to deny a license to or revoke a license from those whose moral character or misconduct renders them unfit to engage in business in the Virgin Islands, see V.I. Code Ann., tit. 27 § 304(a)(2) (1997), or those who allow improper or wrongful behavior on their business premises, see id. § 304(a)(3). The plaintiffs also profess concern about those provisions that allow the executive agencies to enjoin a person from engaging in business without a license. See id. §§ 307(c), 307a(b). The plaintiffs' concerns (and their claims) must, however, be deemed tempered by the Commissioner's

give deference to the interpretation given the statute by the agencies charged with enforcing it. This argument is drawn from Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984). Assuming without so holding that the principles of Chevron apply to the relationship of the executive agencies and the courts in the Virgin Islands, the well-known two-part test enunciated in Chevron would dictate that our inquiry here begins and ends with the first part of the test, whether the statute is ambiguous. Because the statute here is clear, there is no need to move to the second part of the test, whether the agency has permissibly construed the statute. Similarly, our conclusion about the plain language effectively disposes of the argument, advanced by the plaintiffs, that ambiguous statutory language dealing with licensing schemes is to be interpreted against the government. Assuming without so holding that this is a correct proposition of law, that proposition would have no place in this case because, as we have discussed, the language of the statute is not ambiguous.

Finally, the plaintiffs contend that our reading of the licensing statute would render the licensing scheme in violation of the Equal Protection Clause. We have considered that contention and find it utterly baseless. We therefore reject it summarily.

explicit disclaimer, in this court, of authority to interfere with the court's control over lawyers: "At no time has the [Commissioner] disagreed with the power of the court to regulate the professional conduct of attorneys." Appellant's Reply Brief at 4. Moreover, the Commissioner acknowledges that "the court licenses to regulate professional conduct and competence." Id. There is no action before the court -- or apparently even contemplated by the Commissioner -- to disbar a delinquent attorney or to regulate his professional practice, judgment, or activity. Thus the potential infringement is more modest than was originally supposed. The plaintiffs have nonetheless mounted a separation of powers-based challenge to the statute even insofar as it requires licensure, and hence we must address the issue.⁸

At the threshold, we hold that the doctrine of separation of powers applies with respect to the coordinate branches of government in the Virgin Islands. The Organic Act of the Virgin Islands created three branches of government in the Virgin Islands. See 48 U.S.C. § 1571 (legislative branch); id. § 1591 (executive branch); id. § 1611 (judicial branch). Congress therefore implicitly incorporated the principle of separation of powers into the law of the territory. See Springer v. Government of the Philippine Islands, 277 U.S. 189, 199-202 (1928).

In Springer, the Supreme Court examined the structure of government in the Philippines, then a territory of the United States. The Court noted that Congress, in enacting the Philippine Organic Act, created three branches of government. See id. at 201. In so doing, the Court continued, Congress incorporated the principle of separation of powers into Philippine law. It stated that "as a general rule inherent in the American constitutional system . . . unless otherwise expressly provided or incidental to the powers conferred, the Legislature cannot exercise either executive or judicial power; the executive cannot exercise either legislative or judicial power; the

8. See Appellees Brief at 15 et seq.

judiciary cannot exercise either executive or legislative power." Id. at 201-02.9

Because the issue before us is whether the licensing scheme infringes on judicial power, we must first discuss the scope of the relevant judicial power. The Organic Act, as amended in 1984, provides that "[t]he rules governing the practice and procedure of the courts established by local law and those prescribing the qualifications and duties of the judges and officers thereof . . . shall be governed by local law or the rules promulgated by those courts." 48 U.S.C. § 1611(c) (emphasis added). It is thus clear from the Organic Act itself that local law -- enacted by the Virgin Islands legislature -- may have some role to play in the regulation of attorneys (officers of the court). Put differently, the Organic Act envisions the possibility of the sharing of power over the regulation of attorneys between the Virgin Islands courts and the Virgin Islands legislature, at least to the extent of imposing a license fee. The possibility of that sharing itself disposes of the argument that the application of the licensing scheme to attorneys violates the principle of separation of powers.

The plaintiffs and the appellate division, however, point to provisions of the Virgin Islands Code that, they contend,

9. In addition to Springer, we draw support for our conclusion from two other lines of authority. The first is our own jurisprudence. We have often assumed, without squarely holding, that the doctrine of separation of powers applies with respect to the coordinate branches of government in the Virgin Islands. See, e.g., Territorial Ct. of the Virgin Islands v. Richards, 847 F.2d 108, 112 (3d Cir. 1988); Government of the Virgin Islands v. Harrigan, 791 F.2d 34, 37 n.1 (3d Cir. 1986); Dennis v. Luis, 741 F.2d 628, 631-38 (3d Cir. 1984); Block v. Potter, 631 F.2d 233, 239-40 (3d Cir. 1980). The second is the jurisprudence of the District Court of the Virgin Islands and the Territorial Court, which have routinely applied the doctrine of separation of powers. See, e.g., Bryan v. Liburd, CIV. No. 711/96, 1996 WL 785997, at *2 (Terr. Ct. V.I. Dec. 30, 1996); Dawsey v. Government of the Virgin Islands, 931 F. Supp. 397, 401 (D.V.I.), aff 'd, 106 F.3d 384 (3d Cir. 1996), cert. denied 65 U.S.L.W. 3820 (U.S. June 16, 1997) (No. 96-1803); Luis v. Dennis, 576 F. Supp. 733, 734 (D.V.I. 1983), vacated by 751 F.2d 604 (3d Cir. 1984); Municipality of St. Thomas & St. John v. Gordon, 78 F. Supp. 440, 442-44 (D.V.I. 1948).

provide the judiciary with exclusive control over the regulation of attorneys in the Virgin Islands. The first provision is V.I. Code Ann. tit. 4, § 441 (1967 & Supp. 1994). Section 441 grants jurisdiction over the regulation of attorneys in the Virgin Islands to the district court. But, even if § 441 retains any vitality after the passage of 48 U.S.C. § 1611(b) and V.I. Code Ann. tit. 4, § 76(a) (Supp. 1994), see In re Application of Moorhead, 27 V.I. 74, 80-84 (V.I. Terr. Ct. 1992) (holding that § 1611(b) and § 76(a) shift control over the regulation of attorneys in the Virgin Islands from the district court to the Territorial Court), it would not provide support for the contentions of the plaintiffs. Section 441 does not, by its terms or otherwise, vest exclusive control over the regulation of attorneys in the judiciary. Moreover, nothing in Moorhead or § 76(a), to which the plaintiffs also point, alters the possibility of the sharing of power arrangement embodied in § 1611(c).

The plaintiffs also seek support for their argument from the inherent power of courts to control the admission of attorneys to practice before them. Although the inherent power of the courts to regulate attorneys is well established, see, e.g., Ex parte Secombe, 60 U.S. (19 How.) 9, 13 (1857), it is also well established that legislatures have the power to cabin inherent power in courts of their own creation. See Chambers v. NASCO, Inc., 501 U.S. 32, 47 (1991); see also Secombe, 60 U.S. (19 How.) at 13-14. Although not directly on point, Secombe and Chambers provide some instruction. Congress allowed for the creation of local Virgin Islands courts; it can certainly restrict their power. In this case, Congress did so by including in § 1611(c) the possibility of a sharing arrangement.

We have held that the exercise of legislative power in this regard is at least partially circumscribed. In Eash v. Riggins Trucking, Inc., 757 F.2d 557 (3d Cir. 1985) (en banc), we described three categories of inherent powers: (1) irreducible powers derived from Article III over which courts have absolute command; (2) essential powers that Congress may regulate but not abrogate or render practically inoperative; and (3) useful powers that exist only in the absence of legislative directive to the contrary. See id. at 562-64. It cannot seriously be said, however, that the

power to regulate attorneys is one of the irreducible powers of a court completely immune from legislative interference. As we explained in Eash, such powers exist in "an extremely narrow range of authority involving activity so fundamental to the essence of an autonomous court as a constitutional tribunal that to divest the court of absolute command within this sphere is really to render practically meaningless the terms 'court' and 'judicial power.'" Eash, 757 F.2d at 562.

But even assuming that the power to regulate attorneys is essential to the functioning of a court, the interference here is minimal and in no way renders inoperative that power. Congress has not, by § 1611(c), abrogated the power to regulate attorneys; it has merely allowed for the division of that power. At all events, there can be no dispute that attorneys, like other citizens, are subject to criminal and administrative sanctions as well as the usual collection remedies for failure to pay taxes or licensing fees. Enforcement of such obligations does not impair the judiciary's supervision of the Bar. See, e.g., Sterling v. City of Philadelphia, 106 A.2d 793, 796-97 (Pa. 1954).

Our discussion is not inconsistent with the state court cases that have invalidated similar licensing schemes because such schemes infringe on the power of the courts to regulate attorneys. Such cases are grounded on the exclusive control over the regulation of attorneys the particular state had vested in its judiciary. We mention one case as an example. In Harlen v. City of Helena, 676 P.2d 191 (Mont. 1984), the Supreme Court of Montana invalidated a city ordinance requiring a fee of all persons or entities carrying out business in the city. See id. at 192. Vital to the court was the fact that it had exclusive authority, pursuant to the state constitution, to promulgate rules governing attorneys. See id. at 193.

In sum, the principle of separation of powers is not violated by the application of the Virgin Islands licensing scheme to attorneys. The order of the appellate division affirming the order of the Territorial Court issuing a permanent injunction against enforcement of the licensing statute against non-owner attorneys will be reversed.

WEIS, Circuit Judge, dissenting.

The Territorial Court and the Appellate Division of the District Court of the Virgin Islands read the licensing provisions as a whole and construed them to be generally directed to business entities, partnerships, and corporations, rather than to individual employees. I agree and would affirm.

The statute says in very broad terms that "[e]very person or association wishing to engage in any business, occupation, profession, or trade listed in section 302" must obtain a license. V.I. Code Ann. tit. 27, § 301(a) (1997). In turn, section 302 lists several hundred occupations, services, professions, and callings, including such diverse classifications as itinerant vendors, judo instructors, machine shops (but not machinists), masonry contractors (but not masons), master plumbers, modeling agencies (but not models), pharmacies (but not pharmacists), public accountants, and attorneys. Section 302 includes restaurants classified by the number of tables, but does not list cooks or waiters.

The fees for section 302 licenses range from \$10 for a temporary barber to \$2,000 for business management or consulting firms representing 100 or more foreign service corporations. As a catchall, section 302(b) provides that "[a]ny person or association engaged in a business, occupation, profession, or trade" not listed "or not covered by any other provision of this Code shall obtain an annual license at a fee of \$100."

Despite the majority's view to the contrary, the statute, on its face, applies to every person who receives compensation from an "occupation" as well as to those individuals who engage in a business, profession, or trade. The only exemptions are those specified in section 306 for governmental, religious, charitable, benevolent, and educational organizations.

Despite the broad language in sections 301 and 302, the government does not contend that the licensing statute was intended to cover such an all encompassing swath of the working population. Indeed, the government disclaims such an expansive interpretation. The simple language

construction adopted by the majority, therefore, has been rejected by the licensing body itself.

From the record, it appears that the government has not enforced the wording of the catchall clause, rather it has pursued a policy of licensing business entities instead of their employees. For example, the Territorial Court observed that, in a prior proceeding, an official of the Consumer Service Administration (entrusted with enforcement of the statute) testified that although travel agents are listed in section 302, they "are not required to be licensed, unless they possess an ownership interest in the business for which they work, because they are not professionals, but merely employees." Smith v. Magras, Civ. No. 167/1993, 1993 WL 566406 at *5 (Terr. Ct. V.I. Dec. 17, 1993).

The statute itself, in sections 301(b) and (c), requires that an application for a license be made on a form furnished by the Commissioner of Licensing and Consumer Affairs. Applicants must provide information about their personal history, experience, business record, and criminal record. In designating who should submit applications, section 301(b) states that "[i]n the case of corporations or partnerships the preceding requirements" apply to "all of the shareholders or partners." In all cases, "such requirements shall be applicable to the actual owners and not merely to the nominal owners." Id.

Significantly, employees of corporations and partnerships are not listed among those who must submit information. Thus, in the case of a corporation, as the statute reads, a shareholder must submit personal data, but the president, who is merely an employee, need not. Similarly, as to partnerships, the statute makes no mention of "employee." Subsection 301(c), however, provides that a corporation or partnership application "shall designate each member, officer, or employee who will exercise the powers to be conferred by the license upon such partnership or corporation." This subsection does not in any way require an employee to apply for a license.

Although the Commissioner now takes the position that all lawyers in private practice must pay the license because

it is personal to them, that principle has not been consistently applied. As the district court noted, in the past, the Commissioner had not required an attorney to pay a licensing fee "unless the attorney had an ownership interest in the law partnership or corporation by which she was employed." Magras v. Smith, 940 F. Supp. 124, 129 (D.V.I. 1996).

To adopt the Commissioner's current position that a license is personal would mean that an automobile mechanic who is employed by a repair shop (which must be licensed under section 302(a)) must also obtain a license for his occupation or trade under section 302(b). Similarly, a carpenter employed by a large construction firm would have to obtain an individual license, as would a clerk in a retail establishment. That, however, is not what the Commissioner's practice is, or has been.

The Commissioner's litigation posture in an earlier case in this Court is revealing. Section 306 exempts "agencies of the Virgin Islands or of the United States Government, [] religious, charitable, benevolent, or educational associations." Significantly, that section does not mention "employees" of such institutions. However, in Hollar v. Government of the Virgin Islands, 857 F.2d 163, 171 (3d Cir. 1988), the government argued that because they are merely employees of various agencies, government attorneys fall under the blanket exclusion.

Additionally, the Commissioner contended that government attorneys were only employees because their pre-determined salaries did not depend on the attorneys' caseload or success rate. See Smith, 1993 WL 566406 at *4 (discussing the Commissioner's arguments in Hollar). That latter comment, of course, is irrelevant and, in any event, may well be said of an associate attorney employed by a law firm.

To be consistent, the Commissioner's position that an attorney working for a government salary is an employee and, as such, not subject to the tax, should carry over to an employee lawyer of a law firm who similarly should not be obligated to obtain a license. The exemption of employee lawyers is what the government successfully advanced in

Hollar and that status should apply to plaintiffs here as well.

The district court's conclusion that the statute should be construed to apply only to partners in law firms or sole practitioners who have a proprietary interest is, I believe, the proper reading. The district court's construction pays due fealty to the canon of construing the statute as a whole, gives due regard to the government's consistent application over the years, and results in a rational interpretation of the legislation. I would affirm.

APPENDIX

§ 302 Same; business, occupations, professions and trades covered; fees

(a) The following annual license fees are made applicable to and shall be levied upon all persons and associations engaged in the designated businesses, occupations, professions and trades in the Virgin Islands of the United States:

Additional place of brokers business	\$ 50
Advertising	150
Air cargo transportation	500
Air charter service per plan	100
Air conditioning and refrigeration repair shop	125
Answering service	75
Apartment house A, more than 12 units	250
Apartment house B, 9-12 units	220
Apartment house C, 5-8 units	150
Apartment house D, 4 or less units	100
Appliance repair shop	100
Appraiser	100
Armored car service	300
Artist studios	100
Astrology service	100
Attorney	500
Auto cleaning and polishing service	100
Automobile towing service	100
Automobile undercoating	100
Automotive inspection and diagnostic services	100
Automobile mechanical road service	100
Baby sitting service	100
Baggage, cargo, mail handling	225
Bakery	200
Barber	50
Barber apprentice	25
Barber shop initial issuance	150
Barber shop renewal	75
Barber temporary	10
Battery and ignition repair	100
Beach club	100
Beautician apprentice	30

Beautician temporary	10
Beauty school	200
Beauty shop initial issuance	150
Beauty shop renewal	75
Billiard table per table	30
Blasting service	150
Blender, bottler of alcohol beverages	800
Boat building and repair	125
Boat charter service per boat	100
Boat rental	100
Bookkeeping services	100
Bowling alley	300
Bus transportation per bus	50
Business and management consultant	300
Business courses and related training	250
Business Management or Consulting Firm for Foreign Sales Corporations:	
Firms managing or consulting for less than 5 Foreign Sale Corporations	500
Firms managing or consulting for at least 5 but less than 100 Foreign Sales Corporations	1,000
Firms managing or consulting for 100 or more Foreign Sales Corporations	2,000
Butchery	300
Cable car sightseeing tours	125
Cable splicing and related work	150
Cable television and antenna service	150
Car leasing	100
Car Rental A-- 0 to 20 vehicles	200
Car Rental B-- 21 to 50 vehicles	300
Car Rental C-- more than 50 vehicles	400
Carpentry contractor	75
Carpet laying and related services	125
Catering service	100
Certified public accounting	300
Charm school	100
Check room service	50
Claim adjusters	150
Clinical laboratory	300
Club liquor license	200
Cockfighting	500
Coffee shop and ice cream parlor	100

Coin operated car wash	100
Commercial art services	100
Commercial boat, freight or passengers	100
Commercial breeding services	100
Commercial diver	100
Commercial kennel	100
Commercial laundry	200
Commercial school	250
Commercial warehousing	150
Commodity exchange clearing house	300
Common carrier int. telecommunication	150
Communication equipment inst. contractor	150
Communication equipment oper. contractor	150
Concrete pumping	250
Construction contractor	200
Consultation and related therapy services	125
Copyright protection service	100
Cottage rental	100
Credit bureau and collection agency	200
Customs and visa preparations service	100
Dance studio	50
Dealer in explosives Public Safety	500
Dental laboratory	350
Development and sale of own property	75
Discotheque-- same as night club	
Documentation services for vessels steam ship agent	150
Dog grooming shop	100
Draftsman	75
Driving school	200
Dry cleaning	200
Dry docking services	200
Drywall-- sheetrock installation contractor	75
Electrical contractor	100
Electronic security consultant	150
Employment agency	100
Escort service	200
Exterminating and pest control	150
Fiduciary services	100
Fingerprint services	100
Firearms and ammunition-- distributor or wholesaler	1,000
Firearms and ammunition-- retail sales	550

Firearms and ammunition-- gunsmith	500
Fire prevention service	100
Fireproofing contractor license	150
Florist	150
Flower conserv. and agricultural nursery	100
Flying school	250
Foreign Sales Corporation	100
Free lance photographer	100
Garage and repair shops	200
Garbage removal	100
Gasoline station	250
General aviation service and maintenance	125
General manufacturing-- glass	150
General manufacturing-- food	150
General manufacturing-- tobacco	150
General manufacturing-- textile	150
General manufacturing-- clothes	150
General manufacturing-- public printing	150
General manufacturing-- chemical	150
General manufacturing-- petroleum	1,000
General manufacturing-- rubber	1,000
General manufacturing-- leather	150
General manufacturing-- metal	500
General manufacturing-- fabricated metal	500
General manufacturing-- machinery	500
General manufacturing-- electrical machinery	500
General manufacturing-- transportation equipment	300
General manufacturing-- watches	350
General manufacturing-- miscellaneous	300
Glass tinting contractors	75
Golf course	150
Guard dog service	100
Hair removal service	75
Health club or spa	300
Holding company	200
Hotel and guest house A-- over 100 beds	400
Hotel and guest house B-- over 40-99 beds	300
Hotel and guest house C-- 1-39 beds	200
Hotelkeeper-- liquor	200
Hypnotism consultant	100
Ice manufacturing	250
Importer of goods for resale	200

Information and data processing services	100
Installation of equipment	75
Installation of fences	75
Installation of fire and burglary alarm systems	200
Interior decorating	100
Investment advisory service	200
Investment brokerage	400
Itinerant vendor license	50
Janitorial service and supply	150
Jewelry and watch repair shop	100
Judo instructor	100
Karate instructor	100
Kindergarten school	200
Landscaping consultant	100
Landscaping, garden, maintenance service	100
Laundromat	200
Laundry pickup and delivery service	100
Leasing of plants	100
Lie detection service	100
Liquor wholesalers license	400
Machine shop	100
Manicurist apprentice	10
Manufacturers of aerated waters	150
Manicurist	75
Marine biological supplies	100
Marine salvage and Rel undeater service	150
Marine surveyor and blastg service	150
Marine surveyor and conltant	150
Masonry contractor	75
Massage parlor	150
Master electricia	100
Master plumber	100
Media adverting, promotion and production	200
Medical labatory	300
Messengernd delivery service	100
Misc. asement devices	150
Mobilfood service	100
Mobe refreshment stand	75
Meling agency	100
Mortgage banker	200
Mortgage broker	400
Motion picture distribution	150

Motion picture theater	500
Motor vehicle dealer	500
Moving and freight forwarding services	200
Music recording and sales business	200
Nickelodeon per machine	30
Night club license	700
Nutrition and consulting services	100
Oceanographic research and development	100
Out patient care facility	100
Owners representative coordinator	100
Painting contractor	75
Paralegal services	100
Parking lot vehicle	100
Pharmacy	300
Photocopying services	75
Photographic processing or studio	50
Piano technician	100
Pin ball and similar machines per machine	50
Plastering contractor	75
Plumbing contractor	100
Pollution control services	100
Poultry farm-- agriculture	
Prime distillers of alcoholic beverages	1,500
Printing and publishing house	250
Private elementary/secondary school	200
Production of milk and milk products	125
Project coordinator/consultant	75
Public accountant	120
Public auctioneer	100
Public dance license	25
Public relations services	100
Public title reporter	100
Radio and television repair shop	100
Radio advertising, promotion and production	200
Radio station	500
Real estate broker	250
Real estate salesman	200
Real estate salesman-- temporary	100
Real estate-- change business place	50
Real estate-- change of associate	50
Red cap porter service	50
Rent of real property (other than buildings)	100

Rental of equipment	100
Rental of non-residential building	150
Rental watersports equipment	100
Repair and maintenance of misc. items	100
Restaurant A-- Seating capacity 25 or more	200
Restaurant B-- Seating capacity less than 25	125
Retail shop and store-- except liquor	100
Retailers liquor license	250
Riding academy	75
Rooming house	100
Rug and furniture cleaning on location	100
Sailing school	200
Sale of prepaid hotel reservation	125
Sales and marketing concepts	50
Sales finance	200
Salvage and sale of used parts	100
Scheduled air service	700
School of ceramics	100
School of language	100
School of music	100
School of philosophy	100
School of underwater photography	100
Scooter and/or motorcycle rental	150
Scrap metal collection and sales	100
Scrap paper collection and sales	100
Scrap plastic collection and sales	100
Scuba diving school and related services	125
Secretarial service	100
Security analyzing service	100
Septic tank cleaning	150
Sewer cleaning and rodding services	150
Sewerage maintenance and operational engineering services	150
Sewing school	100
Sheet metal and iron work shop	150
Ship chandler	100
Shoe repair shop	75
Sightseeing and tour operations	100
Sign painting	75
Silk screen manufacturing	150
Skating rink	175

Solicitor, sales and commission agent	75
Sporting and recreational camp	100
Sports instructor	100
Sports promoter	150
Sprinkle system installation contractor	75
Steamship and shipping agents	150
Stevedoring license	100
Summer school	100
Swimming instruction	100
Swimming pool installation contractor	150
Tailoring and alteration service	100
Tavernkeeper A-- distilled and fermented spirits	250
Tavernkeeper B-- fermented spirits only	150
Tax consultant	100
Telegraph office	350
Television station	600
Temporary help contracting agency	100
Tennis club	100
Theatrical production, except motion picture	100
Theatrical promoter and booking agent	150
Theatrical variety employment service	150
Tile setting contractor	75
Tire recapping and retreading service	100
Tobacco Retailer	100
Tobacco Wholesaler	500
Transient disco service	75
Transient amusement operator	500
Translation services	100
Travel and ticket agent	150
Tree surgery	100
Trucking, transportation and delivery	100
Typewriter repair shop	100
Undertaking business	500
Upholstery shop	100
Used car lot	100
Vehicle inspection service	100
Vending machine A--	
License-- 0 through 5 machines	100
Vending machine B--	
License-- 6 through 20 machines	150
Vending machine C--	
License-- 21 through 50 machines	200

Vending machine D--	
License-- more than 50 machines	400
Vocational training school	100
Water skiing school	100
Water supply services	150
Waterproofing contractor	75
Welding services	100
Wholesaler and other than liquor	250
Writing school	100
Yacht brokerage service	100

(b) Any person or association engaged in a business, occupation, profession, or trade not designated in subsection (a) of this section or not covered by any other provision of this Code shall obtain an annual license at a fee of \$100.

. . . .

A True Copy:
 Teste:

Clerk of the United States Court of Appeals
for the Third Circuit