

# **RULES GOVERNING THE SUPERIOR COURT OF THE VIRGIN ISLANDS**

(amended June 1, 2019)

## **PART I. GENERAL PROVISIONS**

### **Rule 1. Scope; Construction; Citation.**

(a) These rules govern the practice and procedure in the superior court except in cases where the Virgin Islands Rules of Civil Procedure, the Virgin Islands Rules of Criminal Procedure, the Virgin Islands Rules of Evidence, the Virgin Islands Small Claims Rules, the Virgin Islands Habeas Corpus Rules, or other rules promulgated by the Supreme Court of the Virgin Islands apply. They are intended to provide for the just determination of causes coming within the jurisdiction of the court. They shall be liberally construed to secure simplicity and uniformity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.

(b) These rules shall be known as the Rules of the Superior Court. They shall be cited as “Super. Ct. R.”

### **Rule 1.1. Judges and Magistrate Judges.**

“Judge” refers to a judge appointed by the Governor with the advice and consent of the Legislature in accordance with 4 V.I.C. § 72(a). “Magistrate judge” refers to a judicial officer appointed by the Presiding Judge in accordance with 4 V.I.C. § 122(a).

Wherever the word “judge” appears, such authority may also be granted to a magistrate judge of the Superior Court to the extent not inconsistent with the rules of the Superior Court or any applicable statute.

### **Rule 2. [repealed].**

### **Rule 3. Sessions of Court.**

The sessions of the court shall be held in suitable places to be provided by the Government of the Virgin Islands. Sessions of the Family Division of the Superior Court may be held in a public school or other public building, the public officers having control of such building consenting. Whenever a public school or other public building is used for this purpose, sessions of the Court shall be scheduled at an appropriate time so that children appearing before the Court shall not be exposed to public view. Except in hearings to declare a person in criminal contempt of court, the general public shall be excluded from the hearing of juvenile causes, wherever held, as required by 5 V.I.C. §§ 2517 and 2548.

### **Rule 4. Calendar and Docket.**

The clerk of the court for each judicial division shall maintain a calendar which shall list the causes to be heard at each session of the court in his division. He shall also maintain a docket for each division of the court in his judicial division, in which he shall enter the title of each cause, with date of its commencement and a memorandum of every subsequent proceeding therein, with the date thereof and a record of all the fees charged.

**Rule 5. Orders.**

All orders, judgments, and determinations of the court shall be in writing and signed by the judge, provided, however, that oral orders shall be enforceable pending their reduction to writing.

**Rule 6. Stenographic Record of Proceedings.**

(a) At the request of any party to a proceeding before the Court or upon the request of the judge of the Court, the reporter-secretary shall record the testimony and proceedings, prepare a transcript thereof, attach to the transcript his official certificate, and deliver the same to the party or judge making the request. He shall also promptly deliver to the clerk for the record of the Court a certified copy of any transcript so made. The reporter may charge and collect fees for transcripts requested by the parties, excluding the Superior Court and the Government of the Virgin Islands, at rates prescribed by the Superior Court.

(b) *Electronic Transcripts.* At the request of any party to a proceeding before the Court, the Clerk of the Court shall provide electronic transcripts of the proceedings, if such proceedings were digitally recorded. The requesting party shall pay a fee of \$50.00 to the Clerk of the Court for such electronic transcript. Upon payment of the designated fee, the Clerk shall submit copies of the transcript, to be distributed as follows: One electronic transcript copy shall be submitted to the requesting party, one to each opposing party, and one to the case file. Such fee shall include a maximum of five electronic copies.

**Rule 6a. Exemplification of Court Records (Clerk's Certificate, Judge's Certification and Exemplification).**

Any party to a proceeding before the Court may request from the Clerk of the Court an official attested copy of the court documents pertaining to the proceeding, along with an Exemplification by the Clerk.

The Clerk of the Court may, upon request by a party or an entity, be required to provide an Exemplification of Court Records, where a mere certification of record is deemed insufficient to assure the authentication of a document. Such exemplification consists of a tripartite document that includes: the Exemplification of Records by the Clerk, the Judge's Certification and the Clerk's Certificate. Whenever the Clerk of the Court is required to exemplify any record of the Court, there shall be imposed a fee for exemplification of court records of \$50.00, payable to the Clerk of the Court.

**Rule 6b. Record Searches.**

An individual may request a record search of any public court document by the Clerk of the Court. If the disposition of the matter occurred more than fifteen (15) years from the date the search is requested, the requestor shall pay a fee of \$75.00. If the disposition occurred less than fifteen (15) years but over five (5) years from the date the search is requested, the requestor shall pay a fee of \$25.00. If the disposition occurred less than five (5) years from the dated the search is requested, the requestor shall pay a fee of \$10.00. All fees shall be payable to the Clerk of the Court.

**Rule 6c. Copying Fees.**

A fee of \$1.00 per page shall be charged for copying a document. This fee is in addition to applicable fees to be applied for certifying such copies. All fees shall be payable to the Clerk of the Court.

**Rule 6d. Return Check Fee.**

A fee of \$50.00 shall be assessed for any check payable to the Clerk of the Court which is returned by the payor's bank for insufficient funds, stop payment, or any other reason. The return check fee is in addition to any fees due and owing the Court and shall be paid before receipt of the requested document or any future documents that may be requested. The Clerk of the Court is authorized to refuse to accept checks from individuals whose checks have been returned.

**Rule 6e. Payment of Costs for Storage of Personal Property.**

Whenever the Office of the Virgin Islands Marshal is required to store items of personal property taken into custody by court order, a fee payable to the Clerk of the Court shall be imposed. Upon personal property being taken into custody, and upon satisfaction of all proceedings required to legally transfer ownership, the Office of the Virgin Islands Marshal shall provide written notice of such custody to the new owner of the property, along with instructions for taking possession of the same. After the expiration of five (5) days after such notice, the Office of the Virgin Islands Marshal shall assess, against the owner of the property, a fee of \$10 per day, which fee shall be imposed for thirty (30) days. Thereafter, the fee shall be increased to \$25.00 per day for the next fifteen days. If the owner fails to collect the property after receiving notice and fails to pay the storage fee as outlined above, the Court may dispose of the property by any lawful method. Written notice must be provided to the owner of the property of the intent to dispose of the property at least ten days prior to the disposition.

**Rule 7. [repealed].**

**Rule 8. [repealed].**

**Rule 9. [repealed].**

**Rule 10. [repealed].**

**Rule 10.1. [repealed].**

**Rule 11. Subpoena.**

The Clerk of the Superior Court shall also issue subpoenas, signed and sealed, to law enforcement officers, who shall fill in the blanks before they are served upon witnesses for the Government and for the defense in traffic cases at the same time traffic tickets are served.

**Rule 12. [repealed]**

**Rule 13. [repealed]**

**Rule 14. Administrative Remedies Under 4 V.I.C. § 72b.**

Any aggrieved litigant or attorney may petition the Presiding Judge in writing for administrative resolution of any matter involving observance by judges or other judicial personnel of the Court's Rules of Practice and Procedure or the prompt dispatch of the Court's business. The petition may be in the form of a written request for relief setting forth the name of the case, the case number, the judge to which assigned, if any, and a brief description of the grievance. Upon receipt of the petition, the Presiding Judge shall review the matter and take such administrative action as is deemed appropriate. All interested parties shall be notified in writing of the decision of the Presiding Judge.

**Rule 15. Writs of Review.**

(a) A writ of review may be granted by the Court upon the petition of any person aggrieved by the decision or determination of an officer, board, commission, authority or tribunal. Such petition shall be filed within 30 days after the date of the decision or determination complained of and shall recite such decision or determination and set forth the errors alleged to have been committed therein. The petition shall be signed by the petitioner or his attorney, and shall be accompanied by the certificate of the attorney that he has examined the process or proceeding and the decision or determination therein sought to be reviewed, that the same is in his opinion erroneous and that the petition is not filed for delay.

(b) Before granting the writ the Court shall require the petitioner to post a surety bond subject to its approval and in the amount to be fixed by the Court in order to ensure that the petitioner will obey the determination on or decision sought to be reviewed and perform his obligations thereunder in case it is affirmed by the Court upon review.

(c) If the Court grants the writ and the petitioner files the bond required by this rule, the clerk shall issue the writ directed to the officer, board, commission, authority or tribunal whose decision or determination is to be reviewed or to the clerk or other person having custody of his or its records or proceedings requiring him, it or them to return the writ to the Court within 20 days together with a certified copy of the record of the proceedings in question in order that the same may be reviewed by the Court.

(d) The Court may, upon application by the petitioner, include in the writ a clause requiring the respondent officer, board, commission, authority or tribunal to desist from further proceedings in

the matter under review until the final determination thereof by the Court.

**Rule 16. Sealing of Record.**

In any case or proceeding deemed by the Court to be sensitive, the record thereof, including all filings pertaining thereto, shall be sealed, secured and controlled by the Court's Administrator or Clerk, provided, however, that a cross-reference of the case by its case number shall be maintained in the clerk's office for public referral.

**Rule 17. Re-assignment of Judges.**

In any case in which a judge or Court employee from one judicial district is a party, a judge from the other district may be assigned to hear and determine the matter, except in uncontested matters.

**Rule 18. Unsworn Declarations Under Penalty of Perjury.**

Wherever, under these rules or under any rule, regulation, order, or requirement adopted by, made pursuant to, or incorporated within these rules, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States Virgin Islands: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States Virgin Islands that the foregoing is true and correct. Executed on (date). (Signature)".

(2) If executed within the United States Virgin Islands: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)".

**Rule 19. [reserved]**

**Rule 20. [repealed]**

**PART II. PROCEDURE IN THE CIVIL DIVISION**

**I. Form of Action**

**Rule 21. [repealed]**

**II. Commencement of Action**

**Rule 22. [repealed]**

### **III. Process**

**Rule 23. [repealed]**

**Rule 24. [repealed]**

**Rule 25. [repealed]**

**Rule 26. [repealed]**

**Rule 27. [repealed]**

**Rule 28. [repealed]**

### **IV. Pleadings and Motions**

**Rule 29. [repealed]**

**Rule 30. [repealed]**

**Rule 31. [repealed]**

**Rule 32. [repealed]**

**Rule 33. [repealed]**

**Rule 34. [repealed]**

**Rule 35. [repealed]**

**Rule 36. [repealed]**

#### **Rule 37. Joinder in Landlord and Tenant Cases**

Summary proceedings between landlord and tenant for the recovery of possession of premises and for forcible entry and detainer which are brought under the provisions of 28 V.I.C. § 781 et seq. shall not be joined with any other cause of action; nor shall a defendant, in any such proceeding, be permitted to file a counterclaim or third-party complaint, although the defendant is permitted to raise any defenses he may have to the plaintiff's cause.

### **V. Proceedings Before Trial**

**Rule 38. [repealed]**

**Rule 39. [repealed]**

**Rule 40. [repealed]**

## **VI. Trials Generally**

**Rule 41. [repealed].**

**Rule 42. [repealed].**

**Rule 43. [repealed].**

**Rule 44. Landlord and Tenant Cases.**

Landlord and tenant cases shall be placed on a separate list on the calendar and shall be heard on the return day unless adjourned by the court, or by consent with the approval of the court.

**Rule 45. [repealed].**

**Rule 46. [repealed].**

## **VII. Judgment**

**Rule 47. [repealed]**

**Rule 48. [repealed]**

**Rule 49. [repealed]**

## **VIII. New Trial**

**Rule 50. [repealed]**

## **IX. Execution**

**Rule 51. [repealed]**

**Rule 52. [repealed]**

**Rule 53. [repealed]**

**Rule 54. [repealed]**

## **PART III. PROCEDURE IN THE SMALL CLAIMS DIVISION**

**Rule 61. [repealed].**

**Rule 62. [repealed].**

**Rule 63. [repealed].**

**Rule 64. [repealed].**

**Rule 65. [repealed].**

**Rule 66. [repealed].**

**Rule 67. [repealed].**

**Rule 68. [repealed].**

**Rule 69. [repealed].**

## **PART IV. PROCEDURE IN THE CONCILIATION DIVISION**

### **Rule 71. Application for Summons; Issuance.**

Any party to a controversy of a civil nature which in his opinion may be adjusted without resort to court action may apply to a judge or clerk of the Superior Court for the issuance of a summons for conciliation.

If it shall seem to the judge that such controversy would lend itself to conciliation, he shall cause a summons for conciliation to be served upon the adverse party directing him to appear for an informal hearing on a day certain, not less than three days after the issuance of the summons, except that for good cause shown, the judge may direct the adverse party to appear in a shorter time.

### **Rule 72. Hearing; Agreement; Judgment.**

(a) The hearing shall be held informally and in private by the judge, an attorney-at-law of this territory or a law clerk designated by the judge. He shall hear the parties and their witnesses and may require statements under oath, but shall not be bound by the rules of evidence. He shall endeavor to effect an amicable settlement of the controversy agreeable to law. Either or both parties may be represented by counsel.

(b) The clerk shall keep a record of the proceeding but no record shall be made of the evidence and no part of the conciliation proceedings shall be considered at any later trial of the controversy if suit is brought thereon.

(c) If an agreement in settlement of the controversy is reached by the parties at the hearing before the judge, he shall reduce it to writing and when signed by the parties his report of the settlement agreement shall be filed in the court and entered upon its civil docket and shall have the force and effect of a judgment.

### **Rule 73. Voluntary Appearance.**



(a) Parties appearing together voluntarily may submit their controversy to the judge of the court sitting in the conciliation division for conciliation without the issuance of a summons.

(b) When such parties have appeared and submitted their dispute for conciliation, the proceedings shall be governed by Rule 72.

## **PART V. PROCEDURE IN THE FAMILY DIVISION**

### **I. Procedure Generally**

**Rule 81. [repealed].**

**Rule 82. [repealed].**

**Rule 83. [repealed].**

**Rule 84. [repealed].**

**Rule 85. [repealed].**

**Rule 86. [repealed].**

**Rule 87. [repealed].**

**Rule 88. [repealed].**

**Rule 89. [repealed].**

### **II. Procedure in Juvenile Cases**

**Rule 90. [repealed].**

**Rule 91. [repealed].**

**Rule 92. [repealed].**

**Rule 93. [repealed].**

**Rule 94. [repealed].**

**Rule 95. [repealed].**

**Rule 96. [repealed].**

**Rule 97. [repealed].**

**Rule 98. [repealed].**

### **III. Procedure in Adult Cases**

**Rule 99. [repealed].**

**Rule 100. [repealed].**

**Rule 101. [repealed].**

**Rule 102. [repealed].**

**Rule 103. [repealed].**

**Rule 104. [repealed].**

**Rule 105. [repealed].**

**Rule 106. [repealed].**

**Rule 107. [repealed].**

**Rule 108. [repealed].**

**Rule 109. [repealed].**

**Rule 110. [repealed].**

**Rule 111. [repealed].**

**Rule 112. [repealed].**

**Rule 113. [repealed].**

**Rule 114. [repealed].**

**Rule 115. [repealed].**

### **IV. Family Mediation**

**Rule 116. [repealed].**

**Rule 117. [reserved]**

**Rule 118. [reserved]**

**Rule 119. [reserved]**

## **PART VI. PROCEDURE IN THE CRIMINAL DIVISION**

### **I. Preliminary Proceedings**

**Rule 121. [repealed].**

**Rule 122. [repealed].**

**Rule 123. [repealed].**

### **II. Arraignment and Preparation for Trial**

**Rule 124. [repealed].**

**Rule 125. [repealed].**

**Rule 126. [repealed].**

**Rule 127. [repealed].**

**Rule 128. [repealed].**

**Rule 129. [repealed].**

**Rule 130. [repealed].**

**Rule 131. [repealed].**

### **III. Appearance of Attorney General**

**Rule 132. [repealed].**

### **IV. Trial**

**Rule 133. [repealed].**

**Rule 134. [repealed].**

**Rule 135. [repealed].**

**Rule 136. [repealed].**

**Rule 137. [repealed].**

## V. Criminal Contempt

**Rule 138. [repealed].**

**Rule 139. [repealed].**

**Rule 140. [repealed].**

## VI. Bail

**Rule 141. [repealed].**

**Rule 142. [repealed].**

**Rule 143. [repealed].**

**Rule 144. [repealed].**

**Rule 145. [repealed].**

**Rule 146. [repealed].**

**Rule 147. [repealed].**

**Rule 148. [repealed]**

**Rule 149. [repealed]**

**Rule 150. [repealed]**

## VII. Traffic Cases

### **Rule 151. Complaint and Summons; Form.**

(a) *Form.* In cases involving violation of statutes, ordinances or regulations relating to the operation or use of motor vehicles, hereinafter designated as “traffic offenses”, the complaint and summons shall be in the form prescribed by the superior court to be known as the “Uniform Traffic Ticket.” Such ticket may be filed electronically in such form and manner as approved by the Superior Court, and may include electronic signatures and/or affirmations. The uniform traffic ticket shall consist of four parts, separated by carbon paper: 1. the complaint, to be printed on white paper; 2. the police record, which shall be a copy of the complaint and printed on green paper; 3. the officer's copy, which shall be a copy of the complaint and printed on yellow paper; and 4. the summons to be printed on white cardboard stock. Their reverse sides shall be as set out in said form, except that where the superior court has established a violations bureau, the court may add offenses to the list of those which may be heard by the court only, appearing on the reverse side of the summons. Where a violations bureau has not been established, only the notice and the

appearance, plea and waiver shall be printed on the reverse side of the summons.

(b) *When Used.* The complaint form shall be used in traffic cases, whether the complaint is made by a police or peace officer, or by any other person.

(c) *Records and Reports.* The clerk of the superior court shall be responsible for all uniform traffic tickets issued to law enforcement officers and others and for their proper disposition, and shall prepare or cause to be prepared appropriate records and reports relating to these traffic tickets, in such manner and at such times as directed by the court.

(d) *Time for Filing.* Traffic tickets duly served upon defendants and indicating a court appearance date shall be filed with the Traffic Division of the Superior Court of the Virgin Islands no later than fourteen (14) days prior to the court appearance date. Traffic tickets duly served upon defendants without a court appearance date shall be filed with the Traffic Division of the Superior Court of the Virgin Islands within thirty (30) days of such service. Failure to file traffic tickets as ordered herein shall result in the dismissal of the traffic tickets without prejudice.

**Rule 152. Improper Disposition of Traffic Ticket; Contempt of Court; License in Lieu of Bail.**

(a)

(1) No traffic ticket may be disposed of except as authorized by law or these rules.

(2) Any person who aids in the disposition of a traffic ticket or summons in any manner other than that authorized by the court shall be proceeded against for criminal contempt in the manner provided by these rules.

(3) Where a car rental agency collects traffic fines from renters and fails to remit the fines and other assessed costs to the court within five (5) days of receipt thereof, the agency and/or its principal officers shall be proceeded against for criminal contempt in the manner provided by these rules.

(b) Whenever any person lawfully possessed of a V.I. chauffeur's or operator's license is arrested and charged with the violation of any traffic law or regulation, the punishment of which is a fine or imprisonment of one year or less, he shall have the option of depositing his V.I. chauffeur's or operator's license with the arresting officer in lieu of bail or any other security which may be required for his appearance in the Superior Court to answer the charge. The arresting officer shall attach the license to the traffic complaint to be filed with the superior court. Upon disposition of the charge, the return of the license will be decided by the court.

If an arrested person elects to deposit his license, as herein provided, the arresting officer shall issue the person a receipt for said license and thereafter the person shall be permitted to operate a motor vehicle during the pendency of the case in which the license was deposited, unless his license or privilege is otherwise revoked, suspended or cancelled. If a driver is rearrested for another traffic offense while his license is held in lieu of bail, this provision shall not apply.

In the event the chauffeur or operator fails to appear to answer the charge against him, the Clerk of the Superior Court shall immediately notify the Commissioner of Police, and such person shall

forthwith be subject to arrest or to such other orders as may be issued by the Court.

The Clerk of the superior court shall fashion, print and distribute to the offices of the superior court and the Commissioner of Police, the receipt which an arresting officer shall issue to any person who, in accordance with the provisions hereof, deposits his chauffeur or operator's license in lieu of bail.

**Rule 153. Warrant; Notice to Commissioner of Police.**

Except as otherwise provided in these rules, the court may issue a warrant for the arrest of any defendant who has failed to appear or answer a traffic ticket or summons duly served upon him and against whom a complaint has been filed. Additionally, the traffic lien imposed pursuant to 20 V.I.C. § 497 shall be enforced.

**Rule 154. Trial of Complaints Together.**

The judge may order that two or more complaints be tried together if the offense arose out of the same facts and circumstances, regardless of the number of defendants. In other cases, with the consent of the persons charged, the judge for convenience, may consolidate complaints for trial.

Whenever a traffic case is related to a criminal case filed and cognizable in the Superior Court, in that it arose out of the same facts and circumstances, the said traffic case may, by order of the judge of the superior court, be consolidated for trial with such criminal offense on the criminal calendar of the superior court.

**Rule 155. Trial Date.**

The date fixed for the trial of any traffic offense shall be at least five days from the date of its commission unless the defendant, having been informed of his right to such trial date, waives it and the court in its discretion fixes an earlier date.

**Rule 156. Trial of Traffic Cases.**

(a) *Separate Trial.* Insofar as practicable, traffic offenses shall be tried separate and apart from other offenses.

(b) *Dates, Times and Places.* The court shall designate particular dates, times and places for the trial of traffic offenses.

(c) [repealed]

(d) *Certain Objections to Be Made Before Trial Only.* An objection to the validity or regularity of the complaint or process issued thereunder must be made by the defendant before trial.

**Rule 157. Presence of Defendant.**

The defendant shall be personally present in all traffic cases at the imposition of sentence, except in cases which may be disposed of by the Clerk of the Court, and in instances covered by Rule 158.

**Rule 158. Defense by Deposition; Judgment.**

(a) *Deposition in Certain Cases.* In all traffic cases, except those involving accidents resulting in personal injury, operation of a motor vehicle while under the influence of intoxicating liquor or a narcotic or habit-producing drug or permitting another person who is under such influence to operate a motor vehicle owned by the defendant or in his custody or control, reckless driving, or leaving the scene of an accident, the court may permit the defendant to present his defense by deposition where:

(1) The court determines that it would be an undue hardship on the defendant to require him to appear in person at the time and place set for trial; and

(2) The defendant, having been fully informed of his right to a reasonable postponement of the trial, waives in writing his right to be present at the trial. Such deposition may also present matter in mitigation of the offense charged.

(b) *Taking of Depositions.* Depositions offered pursuant to this rule shall be taken in the manner provided by law. They shall be sworn to before any judge of a court of record of this territory or of the state or territory wherein the defendant is resident. The judge taking the deposition shall forward it to the trial court at the expense of the defendant.

(c) *Mailing Copy of Judgment.* Where a defendant presents his defense by deposition, the court shall mail him a copy of the judgment in the case.

**Rule 159. Plea of Guilty; Procedure.**

(a) *Notice to Defendant.* Before accepting a plea of guilty to a traffic offense other than a parking offense, the court shall inform the defendant that a record of the conviction will be sent to the Commissioner of the Department of Public Safety of this territory or the Commissioner of Motor Vehicles of the state where the defendant received his license to drive, to become a part of his driving record.

(b) *Hearing Witnesses.* In all cases, except those where a plea of guilty has been entered, the court shall hear the witnesses in support of the complaint prior to judgment and sentence. This provision shall not apply to pleas accepted by the violations clerk under Rule 160.

**Rule 160. Violations Clerk.**

(a) *Appointment and Functions.* The court, whenever it determines that the efficient disposition of its business and the convenience of persons charged so requires, may constitute the clerk or deputy clerk of the court for a judicial division or any other appropriate official of the government, or, if such other appropriate officials are not available for appointment, any suitable and responsible person, as violations clerk for such judicial division. It shall be the function of a violations clerk to accept appearances, waiver of trial, plea of guilty and payment of fine and costs in traffic

offenses, subject to the limitations hereinafter prescribed. The violations clerks shall serve under the direction and control of the presiding judge.

(b) *Designated Offenses; Schedule of Fines.* The court shall by order, which may from time to time be amended, supplemented or repealed, designate the traffic offenses within the authority of the violations clerk, provided that such offenses shall in no event include offenses cognizable in the district court, accidents resulting in property damage or personal injury, operation of a motor vehicle while under the influence of intoxicating liquor or a narcotic or habit-producing drug or permitting another person who is under such influence to operate a motor vehicle owned by the defendant or in his custody or control, reckless driving, or leaving the scene of an accident.

The court, by published order to be prominently posted in the place where the fines are to be paid, shall specify by suitable schedules the amount of fines to be imposed for first, second and subsequent offenses, designating each offense specifically in the schedules, provided such fines are within the limits declared by statute or ordinance. Fines and costs shall be paid to, receipted by and accounted for by the violations clerk in accordance with these rules.

(c) *Plea and Payment of Fine and Costs.*

(1) *Parking Offenses.* Any person charged with a parking offense may mail the amount of the fine and costs indicated on the ticket for such violations, together with a signed plea of guilty and waiver of trial, to the violations clerk.

(2) *Other Offenses.* Any person charged with any traffic offense, other than a parking offense, within the authority of the violations clerk may appear in person before the violations clerk and, upon signing a plea of guilty and waiver of trial, pay the fine established for the offense charged, and costs. He shall, prior to such plea, waiver and payment, be informed of his right to stand trial, that his signature to a plea of guilty will have the same force and effect as a judgment of court, and that the record of conviction will be sent to the Commissioner of the Department of Public Safety of this territory or the Commissioner of Motor Vehicles of the state where he received his license to drive.

Where the person so charged promptly seeks to appear before the violations clerk in order to plead guilty, waive trial and pay the established fine and costs, and finds the violations clerk's office closed, he may, where he resides outside the judicial division, telephone the violations clerk, determine the amount of the fine and costs, and forthwith mail the same, together with a signed plea of guilty and waiver of trial, to the violations clerk.

(d) *Procedure After Three Convictions.* No person who has been found guilty or who has signed a plea of guilty to three previous traffic offenses in the current calendar year shall be permitted to appear before the violations clerk unless the court shall, by general order applying to certain specified offenses, permit such appearance, conditioned upon the payment of a substantially increased fine, which increase shall be specified in such general order.

## **PART VII. PROCEDURE ON APPEAL TO THE DISTRICT COURT**

**Rule 176. [repealed]**

**Rule 177. [repealed]**



**Rule 178. [repealed]**

**Rule 179. [repealed]**

**Rule 180. [repealed]**

**Rule 181. [repealed]**

**Rule 182. [repealed]**

**Rule 183. [repealed]**

**Rule 184. [repealed]**

**Rule 185. [repealed]**

**Rule 186. [repealed]**

## **PART VIII. PROBATE AND FIDUCIARY PROCEEDINGS**

**Rule 190. [repealed].**

**Rule 191. [repealed].**

**Rule 192. [repealed].**

**Rule 193. [repealed].**

**Rule 194. [repealed].**

**Rule 195. [repealed].**

**Rule 196. [repealed].**

**Rule 197. [repealed].**

**Rule 198. [repealed].**

**Rule 199. [repealed].**

**Rule 200. [repealed].**

**Rule 201. [repealed].**

**Rule 202. [repealed].**

**Rule 203. [repealed].**

**Rule 204. [repealed].**

**Rule 205. [repealed].**

**Rule 206. [repealed].**

**Rule 207. [repealed].**

**Rule 208. [repealed].**

**Rule 209. [repealed].**

**Rule 210. [repealed].**

**Rule 211. [repealed].**

**Rule 212. [repealed].**

**Rule 213. [repealed].**

## **PART IX. RULES GOVERNING THE VIRGIN ISLANDS BAR**

**Rule 301. [repealed]**

**Rule 302. [repealed]**

**Rule 303. [repealed]**

**Rule 304. [repealed]**

**Rule 305. [repealed]**

**Rule 306. [repealed]**

**Rule 307. [repealed]**

## **PART IX. MAGISTRATE DIVISION**

### **Rule 310. Magistrate Division of the Superior Court**

Pursuant to Title 4, Section 120, Virgin Islands Code, there is established in the Superior Court of the Virgin Islands a Magistrate Division in which the procedure, unless otherwise specified, is in accordance with the rules governing the Superior Court of the Virgin Islands.

### **310.1 Composition**

- (a) The Magistrate Division shall consist of no fewer than two magistrate judges in the division of St. Thomas and St. John and no fewer than two magistrates in the division of St. Croix.
- (b) Each magistrate judge shall reside in the judicial division for which he or she is appointed.
- (c) Magistrate judges may not actively engage in the practice of law, nor engage in any other business, occupation, or employment inconsistent with the proper performance of their duties as judicial officers.
- (d) Magistrate judges may not hold or run for any public office.
- (e) The Administrator of Courts shall provide such offices, equipment, supplies, and personnel necessary for the proper administration and performance of the duties and functions of the Magistrate Division.

### **Rule 310.2. Selection and Appointment of Magistrate Judges.**

- (a) The Presiding Judge of the Superior Court of the Virgin Islands shall appoint magistrate judges pursuant to Super. Ct. Rules 311, 312 and 317.
- (b) Magistrate judges may be appointed by the Presiding Judge for a term of four years upon the affirmative vote and recommendation of a majority of the active judges of the Superior Court pursuant to rules, standards and procedures adopted by the Superior Court.
- (c) In accordance with 4 V.I.C. § 121, magistrate judges are judicial officers and shall be supervised and directed in the performance of their duties by the Presiding Judge pursuant to 4 V.I.C. § 72b.

### **Rule 310.3. Qualifications and Salaries of Magistrate Judges.**

- (a) To be eligible for nomination for appointment as a magistrate judge of the Superior Court, the nominee must:
  - 1. be a citizen of the United States;
  - 2. be a member in good standing of the Virgin Islands Bar Association; and
  - 3. have been engaged in the active practice of law in the Territory for not less than five years immediately prior to his or her nomination.
- (b) No individual may be appointed or reappointed to serve as a magistrate judge unless:
  - (1) he or she is determined by the Court to be competent to perform the duties of the office; and
  - (2) he or she is selected pursuant to the provisions of these rules.
- (c) Magistrate judges of the Superior Court are judicial officers of the Superior Court, and shall

receive as full compensation for their services, a salary equal to 85% of the salary of a judge of the Superior Court. Said salary shall not be reduced during the term of his or her office without his or her consent.

### **Rule 311. Magistrate Judge Selection Panel.**

Before the appointment of a magistrate judge, the Presiding Judge of the Superior Court (“Court”) shall establish a magistrate judge selection panel which shall recommend to the Court for nomination the names of at least two persons per vacancy whose character, experience, ability and commitment to equal justice under the law qualify them to serve as magistrate judges. There shall be a magistrate judge selection panel for the division of St. Thomas and St. John, and a magistrate judge selection panel for the division of St. Croix.

#### **Rule 311.1. Membership.**

(a) The panel shall be composed of a chairperson, a vice-chairperson, and other members appointed by the Presiding Judge with the consent of the majority vote of the active judges of the Superior Court. The panel shall consist of eleven citizens, including the chairperson, from the judicial district where the vacancy exists. Seven members of the panel constitute a quorum.

(b) Members of the panel shall receive no compensation for their service, but may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law.

(c) Of its 11 members, the Selection Panel must include: an assistant attorney general, a territorial public defender, two active members of the Virgin Islands Bar in private practice, a representative of Legal Services and four non-lawyers. Each member of the panel shall be a resident of the division within which the appointment is to be made. No judicial officer, including senior or retired judges or justices, or other Supreme Court or Superior Court officer or employee shall be appointed as a member of the panel.

(d) A new panel for each judicial district shall be established each time a vacancy occurs, provided, however, that the panel may make recommendations for more than one vacancy in the case where two or more vacancies exist during the panel's term.

(e) No person shall be considered as a nominee while serving as a member of the panel or for a period of one year after completion of such service.

#### **Rule 311.2. Duties.**

(a) The chairperson and the vice chairperson shall have such duties as the Court may assign, including, but not limited to, calling and presiding over meetings of the panel.

(b) All information made available to the members of the panel in the performance of their duties, including the names of potential nominees and the identities of individuals recommended by the panel, shall be kept in strict confidence by the panel and the Court except as provided in Super. Ct. R. 311.3.

(c) Decisions of the panel shall be by majority vote of all the members present when a quorum exists.

(d) The panel shall examine the applications of all potential nominees and may, in its discretion, personally interview potential nominees. The panel shall make an affirmative effort to identify and give due consideration to all qualified candidates.

(e) The panel shall determine those individuals among the potential nominees who meet the standards set forth by these rules for appointment as magistrate judges, and shall designate those individuals whom the panel considers best qualified.

(f) The panel shall submit the names of at least two nominees for each vacancy for which it is making recommendations. If the panel fails to submit at least two nominees to the Court within 90 days after the panel has been established, the Presiding Judge may, with the consent of the majority vote of the active judges of the Superior Court, appoint a magistrate without further delay.

### **Rule 311.3. Panel Report.**

The panel shall submit its recommendation to the Court as soon as practicable but not later than 90 days after the panel has been established unless otherwise directed by the Court. The report of the panel shall specify the nominees the panel has determined as best qualified and have attached to it all written information received by or prepared by the panel concerning the recommended nominees.

### **Rule 312. Selection from List and Majority Decision of Judges.**

The active judges of the Superior Court shall select from the list provided by the panel. However, if no nominee receives a majority vote of the active judges of the Superior Court judges, the Court shall request a second list of nominees, which shall consist of nominees not named in the original list. The Court is then free to select from either list. In such case if, again, no nominee from the first or second list receives a majority vote, the Presiding Judge shall make the selection for the Court from either list.

### **Rule 313. Background Investigation of Nominee.**

The name of the person selected by the Court for appointment to a magistrate judge position shall undergo a complete background investigation to be conducted by the Department of Justice, Office of the Attorney General, for the ten-year period immediately preceding his or her nomination. Such investigation shall include, at a minimum, reports from the Virgin Islands Department of Finance, Virgin Islands Bureau of Internal Revenue (BIR), United States Internal Revenue Service (IRS), and such further investigation as is customarily conducted of nominees for judges of the Superior Court.

### **Rule 314. Order of Appointment.**

An order of appointment may be issued by the Presiding Judge of the Superior Court following receipt by the Court of the information obtained from the Department of Justice, Office of the Attorney General.

**Rule 315. Oath of Office.**

Each individual appointed as a magistrate judge shall take the same oath of office as is taken by the judges of the Superior Court before commencing the performance of the duties of his or her office.

**Rule 316. Record of Appointment.**

The appointment of a magistrate judge shall be entered of record in the Court, and notice of such appointment shall be given at once by the Clerk of the Court to the Administrator of Courts.

**Rule 317. Reappointment of Magistrate Judge.**

**Rule 317.1 Qualifications.**

The provisions of Super. Ct. R. 310.3 shall apply to the reappointment of magistrate judges.

**Rule 317.2 Alternative Selection Methods.**

(a) One hundred twenty days prior to the expiration of an incumbent magistrate judge's term of office, the Court shall determine, by majority vote of the active judges of the Superior Court whether it wishes to consider the reappointment of the incumbent.

(b) If the Court determines not to reappoint the incumbent, it shall so notify the incumbent and shall follow the initial selection procedures set forth in these rules.

(c) If the Court determines to consider the reappointment of the incumbent, it shall follow the selection procedures set forth in Super. Ct. R. 317.3.

**Rule 317.3 Procedures.**

If the Court desires to consider the reappointment of an incumbent magistrate judge, it shall adhere to the following procedures:

(a) *Public Notice.* The Court shall cause to be published a public notice, at least ninety days prior to the expiration of a magistrate judge's term, stating that it is required by law to give notice to the public that the incumbent magistrate may be reappointed, inviting comments within thirty days of publication of the notice. The public notice shall be published in a general local newspaper, internet journal, or similar publication and, if practicable, in a bar journal, newsletter, or local legal periodical. The notice shall describe the duties of the position, state the date of expiration of the incumbent's current term of office, and invite comments from the members of the public. The notice shall include the name and address of the person to whom comments shall be submitted. A

copy of the notice shall be filed and posted in the office of the Clerk of the Court and a copy shall be provided to the Administrator. The Administrator shall provide comments received from the public to the judges of the Superior Court.

(b) *Decision of the Court.* After due consideration of the comments from the public, to include members of the Virgin Islands Bar Association, the Court shall determine whether to reappoint the incumbent by majority vote of the active judges of the Superior Court. If the Court decides not to reappoint the incumbent, it shall so notify the incumbent and proceed anew with the selection procedures prescribed in Super. Ct. Rules 310.2 to 316.

### **Rule 318. Disqualification of Magistrate Judge.**

No magistrate judge shall sit or act as such in any action or proceeding:

- (a) To which he or she is a party or in which he is primarily interested;
- (b) When he or she is related to either party, or to an officer of a corporation which is a party, by blood or marriage within the third degree;
- (c) When in the action or proceeding or in any prior action or proceeding involving the same issues, he or she has been of counsel for any party to the action or proceeding; or
- (d) When it is made to appear probable that, by reason of bias or prejudice on the part of such magistrate, a fair and impartial action or proceeding cannot be had before him or her.

### **Rule 318.1 Duty to Disclose Disqualification.**

Whenever a magistrate judge shall have knowledge of any fact which, under the provisions of Super. Ct. R. 318, disqualifies him to sit or act as such in any action or proceeding pending before him or her, it shall be his or her duty to declare the same in open court and cause a memorandum thereof to be entered in the minutes. It shall thereupon be the duty of the clerk to transmit forthwith a copy of such memorandum to each party or his or her attorney who shall have appeared in such action or proceeding, except such parties as are present in person or by attorney when the declaration is made. In any event, the magistrate judge must state the reason for the disqualification and adhere to the provisions of 4 V.I.C. § 284.

### **Rule 318.2 Substitution for Disqualified Magistrate Judge.**

If a magistrate judge in one district disqualifies him/herself to sit or act in an action or proceeding, that matter will be referred for assignment to the other magistrate judge in that district. If both magistrate judges in one district disqualify themselves, a magistrate judge from the other district shall travel to the district where the matter is pending and hear such matter. If the magistrate judges from both districts disqualify themselves, a judge in the district where the matter is pending shall hear the matter.

### **Rule 319. [repealed]**

## **Rule 320. Magistrate Judges: Powers Designated by Judge**

(a) *General.* Pursuant to 4 V.I.C. § 123(b)(1) and (2), the Presiding Judge may assign a magistrate judge to hear and determine any pretrial matter, requested by a judge of the Superior Court, pending before the court (except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, for dismissal or quashing an indictment or information made by the defendant, suppression of evidence in a criminal case, dismissal or to permit maintenance of a class action, dismissal for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action), including matters before the Family Court; and to conduct hearings, including evidentiary hearings, to submit proposed findings of fact and recommendations for the disposition, by a Superior Court Judge, of any motion pertaining to the application of post-trial relief made by individuals convicted of criminal offenses and a prisoner's petition challenging conditions of confinement.

(b) *Procedures for designating a magistrate judge.* A judge of the Superior Court who wishes to utilize a magistrate judge to hear matters pursuant to 4 V.I.C. §123(b)(1) and (2) must complete and submit the form "Request For Designation of Magistrate Judge" to the Presiding Judge or his designee, who shall forward it to the Clerk of the Court. The Clerk's office shall assign the magistrate who is next in the regular rotation for assignments and indicate same in the space provided on the designation form. The Clerk shall enter the request and the designation on the official docket of the affected case(s). A copy of the designation form shall be served on the parties and on the designated magistrate judge. (See Form D.)

(1) *Pretrial Matters.* A magistrate judge may hear and determine pretrial matters pending before the court, including matters before the Family Court, except a motion for injunctive relief in non-domestic violence cases, for judgment on the pleadings, for summary judgment, for dismissing or quashing an indictment or information made by the defendant, suppression of evidence in a criminal case, dismissal or to permit maintenance of a class action, dismissal for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action.

(2) *Nondispositive Matters.* When a pretrial matter not dispositive of a party's claim or defense is referred to a magistrate to hear and decide, the magistrate judge must promptly conduct the required proceedings and, when appropriate, issue a written order stating the decision. A party may serve and file a motion for reconsideration to the order within ten (10) days after being served with a copy of order. The motion for reconsideration shall be served upon the judge assigned to the case. Unless a stay is requested and good cause shown, as determined by the judge, the magistrate judge's order will not be stayed pending the result of the motion for reconsideration. A party may not assign as error a defect in the order not timely objected to.

(3) *Warrants.* All warrants may be issued by a magistrate judge of the Superior Court. Violation of conditions of release does not require a new charging document, however, violators may be arrested and brought before the assigned judge or, if not yet assigned, before the magistrate judge who set the conditions of release. Warrants issued for violation of conditions of probation shall be heard by the sentencing judge or the judge to whom the case is assigned.

(c) *Reconsideration of Pretrial Matters.* A judge of the Superior Court may reconsider any pretrial matter assigned to a magistrate judge pursuant to this rule, *sua sponte* or on motion by a party, where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law.



The judge should consider timely objections and modify or set aside any part of the order that is clearly erroneous or contrary to law.

(1) *Timing.* Once the magistrate judge issues a written order stating the decision in a pretrial matter not dispositive of a party's claim or defense, a party may serve and file a motion to reconsider the order within ten (10) days after being served with a copy. Such motions for reconsideration shall be directed by the Clerk of the Court to the trial judge to whom the case was initially assigned. Within thirty (30) days of the date of entry of the magistrate judge's order, the trial judge assigned to the case shall review the issues timely objected to and set aside any part of the order that is clearly erroneous or contrary to law.

(2) *Filing of Objections.* The party must file an objection to a magistrate judge's pretrial order with the Clerk of the Court and serve a copy on the other party. The adverse party shall have ten (10) days within which to file a response. After receipt of the party's response, or after expiration of ten (10) days after filing of the objection, the Clerk of the Court shall cause a copy to be delivered to the trial judge assigned to the case.

(3) *Resolving Objections.* The trial judge assigned to the case shall review the issues timely objected to and set aside any part of the order that is clearly erroneous or contrary to law. The trial judge shall enter an order granting or denying the motion for reconsideration and stating the reasons therefore. The Clerk of the Court shall serve the orders granting or denying reconsideration on the parties and on the magistrates, and shall enter the same on the official docket.

(d) *Disposition of Prisoner Petitions.*

(1) *Findings and Recommendations.* Pursuant to 4 V.I.C. § 123(b)(2), a magistrate judge may be designated to conduct hearings, including evidentiary hearings, to submit proposed findings of fact and recommendations for the disposition, by a judge of the Superior Court, of any motion, regarding the application of post-trial relief made by individuals convicted of criminal offenses and a prisoner's petition challenging conditions of confinement. The magistrate judge must promptly conduct the required proceedings, maintain a record of all proceedings, and enter a recommended disposition including, if appropriate, proposed findings of fact. The Clerk must serve a copy to each party and transmit a copy to the assigned judge.

(2) *Objections.* Within twenty (20) days after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations. A party may respond to another party's objections within twenty (20) days after being served with a copy. Unless the judge of the Superior Court orders otherwise, the objecting party must promptly arrange for transcribing the record, or whatever portions of it the parties agree to or the magistrate judge considers sufficient.

(3) *Resolving Objections.* The judge of the Superior Court must review de novo any part of the magistrate judge's disposition that has been properly objected to. The judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions. After affording the parties an opportunity to object thereof, the trial judge may accept, reject, or modify the recommended disposition and shall enter an order to that effect.

(4) *Magistrate Judge's Findings.* The magistrate's findings do not constitute a final judgment and only the trial judge's order will be controlling.

### **Rule 321. Magistrate Judges: Trial by Consent; Appeal.**

(a) *General.* Pursuant to 4 V.I.C. § 123(d), upon consent of the parties, a magistrate judge may conduct all proceedings in a jury or non-jury civil matter, including trial and may enter a judgment in the case. A record must be made of all proceedings.

(b) [repealed]

(c) *Consent Procedures.*

(1) *In General.* The parties to all civil actions must be notified by the court of the availability of a magistrate judge to conduct proceedings in jury or non-jury civil matters upon filing of civil actions. The Clerk of the Court shall provide such notification by “Notice of Availability of Magistrate Judge” form. To indicate consent, all parties to an action must sign the form “Consent to an Assignment to a Magistrate Judge” or a stipulated motion executed by all parties. Plaintiff shall be responsible for securing the necessary signatures. Upon the filing of the consent documents, the Clerk of the Court shall enter the same onto the docket and submit them to the Presiding Judge for approval. The Clerk shall then assign the matter to the next magistrate judge in the rotation pursuant to the regular rotational assignment schedule. The Clerk shall thereupon enter the Order of Assignment onto the official docket. (See Forms A, B, and C.)

(2) *Time to Consent.* The consent to have a magistrate judge conduct the proceedings in a jury or non-jury civil matter must be submitted to the Presiding Judge within fifteen (15) days after the completion of all initial pleadings as set forth in Rule 7(a) of the Virgin Islands Rules of Civil Procedure in the affected case. Failure to do so shall result in the proceeding being assigned to a trial judge pursuant to the court's rotational schedule.

(3) *Right to Withhold Consent.* The parties must be notified of the magistrate judge’s availability to conduct civil actions or proceedings but must also be advised that they are free to withhold consent without adverse substantive consequences and that the identity of any party consenting or withholding consent will not be disclosed to the trial judge to whom the case is assigned or to any magistrate judge.

(4) *Appealing Judgment.* A judgment entered by a magistrate judge in a jury or non-jury civil action under this provision is an Order of the Court, appealable to the Supreme Court of the Virgin Islands.

(5) *Maintenance of Assignment Log.* The Clerk of the Court shall maintain a log of assignments made to the magistrate judge by consent and designation, which shall identify the date of the assignment or designation, the caption and case number, and the cause of action.

## **Rule 322. Appeal in Original Jurisdiction Cases.**

(a) *Appealable Decisions.* Final orders or judgments of the Magistrate Division resolving completely the merits of cases which came before them pursuant to their original jurisdiction, as provided by 4 V.I.C. § 123(a), are immediately appealable to judges of the Superior Court of the Virgin Islands, as well as any interlocutory orders appealable by law.

(b) *Initiating Appeal; Record on Appeal.*

(1) *Time.* Appeal from a magistrate judge’s decision may be obtained by filing a notice of appeal with the Clerk of the Superior Court within fourteen (14) days of entry of the judgment or order from which appeal is sought. A notice of appeal filed after the announcement of a judgment or order – but before entry of the judgment or order – is

treated as filed on the date of and after the entry of judgment.

(2) *Contents.* The notice of appeal shall identify the party initiating the appeal, designate the decision or order appealed from, and contain a concise position statement of no more than 780 words in length (or three pages for self-represented parties) which sets forth the issues the party wishes to present for appeal, together with a brief argument in support of the party's position. The notice must include a certificate evidencing service on all other parties to the Magistrate Division proceeding.

(3) *Docketing.* Upon receipt of a notice of appeal, the Clerk of the Superior Court shall place it upon the docket and assign it a RV case number and shall provide notice of the docketing to all parties to the Magistrate Division proceeding.

(4) *Filing Fee.* The party filing a notice of appeal must pay a filing fee in an amount prescribed by the Clerk of the Superior Court, or move to proceed *in forma pauperis*, no later than fourteen days from the date of filing the notice. The clerk or the judge shall dismiss the appeal if the party fails to comply with this requirement and no extension of time has been granted.

(5) *Response.* Within fourteen days of filing and service of the notice of appeal, any other party to the Magistrate Division proceeding may, but is not required, to file a response to the notice of appeal. The response may contain a concise position statement of no more than 780 words in length (or three pages for self-represented parties), which responds to the position statement in the notice of appeal, which may include designating additional issues for review.

(6) *Record.*

(i) The original case file, including all exhibits and evidence taken by the magistrate judge in consideration of the case, and the oral record or written transcript of proceedings, if any, shall constitute the record on appeal.

(ii) Upon the filing of a notice of appeal, the clerk shall promptly provide the complete case record to the judge assigned to the appeal of the magistrate judge's decision, including a digital copy of the oral recording (FTR recording) of the proceedings before the magistrate judge. The judge may request the preparation of a written transcript of the proceeding for the court's benefit if determined that a written transcript is necessary to the fair and proper disposition of the matter.

(iii) The clerk, upon request and upon payment of the required fee, shall provide a copy of the digital FTR recording of the proceeding to any of the parties to the appeal. If the judge requests the preparation of a transcript, each other party shall have access to the file copy of the transcript at the Clerk's Office for use in the appeal. Any party may also purchase a copy of the transcript from the court reporter or transcriber who prepared the transcript at the judge's request, at the rate set for a copy by the Court for such transcripts. Any party may also arrange for the transcribing of the digital recording by a certified transcriber for that party's use.

When relying on a digital record without a prepared transcript, the court and the parties shall cite to the minute and second—or range thereof—in which the event cited to occurs on the recording.

(iv) If no transcript or FTR recording of the evidence or proceedings at a hearing or trial was made, or if the transcript or FTR recording is unavailable, the parties shall confer and, within 10 days, file a joint statement of the evidence or proceedings using the best available means, including the parties' recollections. If the parties cannot agree to a joint statement, each party will separately file their own statements, which shall be referred to the Superior Court for disposition of the differences; provided, however, that in appropriate cases the Superior Court, in the sole discretion of the judge to whom the appeal is assigned, may order and conduct a trial *de novo* in lieu of such settlement.

(c) *Hearing; Disposition.*

(1) *Hearing.* Should the judge to whom the appeal is assigned determine that oral argument would be beneficial, the judge may schedule and hear oral argument after the notice of appeal has been filed, the filing fee has been paid or waived, the response to the notice of appeal filed or the time for filing a response has lapsed, and the complete record has been in possession of the judge. Notwithstanding this Rule, a judge assigned to a matter may, in the judge's sole discretion, schedule a hearing or oral argument at any time when necessary for the administration of justice or for the prompt and efficient administration of matters under this Rule.

(2) *Notice of Hearing Date; Postponement.* The Clerk of the Superior Court shall advise all parties of the hearing date, as well as the time and place thereof. Postponement will be permitted rarely, and only in extraordinary circumstances.

(3) *Failure to Appear.* If a party fails to appear at the hearing, the judge shall hear argument on behalf of the remaining parties; *provided, however*, that if the party who fails to appear is the party who filed a notice of appeal, the judge may immediately dismiss that party's appeal for failure to prosecute.

(4) *Conduct of Hearing.* The judge shall conduct the hearing in a manner so as to secure the just, speedy, and inexpensive determination of the matter. However, the party who filed a notice of appeal shall be entitled to open and conclude the argument. Unless a trial *de novo* has been ordered in accordance with subsection (b)(6)(iv) of this Rule, the judge shall review the Magistrate Division's factual findings and conclusions of law utilizing the same appellate standards of review as the Supreme Court of the Virgin Islands would in like cases.

(5) *Disposition.*

(i) All appeals from decisions of from a magistrate judge's decision shall be decided within 90 days of the filing of the notice of appeal. If the judge has scheduled oral argument, the judge shall conclude the hearing by either orally announcing a decision or taking the matter under advisement. If a decision is announced orally,

the judge shall reduce the judgment into writing as soon as practicable. If the matter is taken under advisement, the judge shall issue a written judgment within 30 days of the hearing. An oral decision or written judgment affirming the order of the magistrate judge in all respects and for the same reasons elucidated by the magistrate judge need not set forth the reasons for the affirmance; however, the basis for the decision must be explained if the judge elects to affirm on different grounds, to reverse or vacate the order of the magistrate judge in whole or in part, or if the judge is asked to rule on a matter raised but not addressed by the magistrate judge. If an oral decision or written judgment affirming the magistrate judge that does not set forth the reasons for affirmance is appealed to the Supreme Court of the Virgin Islands, the judge shall be deemed to have fully adopted the reasoning of the magistrate judge.

(ii) In highly extraordinary and unusual cases, such as those involving multiple issues of first impression of Virgin Islands law, the judge may order the parties to file full appellate briefs. The form, filing, and service of such briefs shall be governed by Rules 22 through 25 of the Virgin Islands Rules of Appellate Procedure, with the following modifications:

- All references to the Supreme Court shall be to the Superior Court, and references to the Superior Court shall be to the Magistrate Division of the Superior Court;
- The party who filed the notice of appeal shall be the appellant, while all other parties shall be the appellees; and
- Only two paper copies of the briefs, the Joint Appendix, and any supplemental appendix need be filed.

Once such a matter is fully briefed, the judge shall promptly schedule the matter for oral argument or resolve the matter through issuance of a written opinion and judgment.

(d) *Post-judgment motions.* Except for motions for attorney's fees and costs, post-judgment motions, including petitions for rehearing, shall not be permitted; provided, however, that the judge may, on motion of a party or on its own initiative, correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. A motion to correct such a mistake shall not toll the time to file a notice of appeal with the Supreme Court of the Virgin Islands, and if an appeal to the Supreme Court is already pending, such a mistake may be corrected only with leave of the Supreme Court.

(e) *Appeal to Supreme Court.* A party may appeal a final judgment or appealable interlocutory order entered by the judge under this Rule to the Supreme Court of the Virgin Islands in accordance with the Virgin Islands Rules of Appellate Procedure.

**Rule 322.1. [repealed]**

**Rule 322.2. [repealed]**

**Rule 322.3. [repealed]**

**Rule 322.4. [repealed]**

**Rule 322.5. [repealed]**

**Rule 322.6. [repealed]**

**Rule 322.7. [repealed]**

**Rule 322.8. [repealed]**

**Rule 322.9. [repealed]**

**Rule 322.10. [repealed]**

**Rule 322.11. [repealed]**

**Rule 322.12. [repealed]**

**Rule 323. [repealed]**

**Rule 324. [repealed]**

**Rule 325. Calendar and Docket.**

To maintain uniformity in procedures within the Magistrate Division and to maximize the resources of the Court while providing the best possible service to the general public, all calendars and dockets prepared by the clerk of the court must be adhered to and can only be amended by the clerk of the court with the prior written approval of the Presiding Judge.

**Rule 326. Forms.**

Forms A, B, and C are applicable in civil matters when the parties consent to an assignment of the case to a magistrate judge. Form D is applicable when a judge requests the designation of a magistrate judge to hear a matter.

**PART X. EXPUNGEMENT OF CRIMINAL RECORDS**

**Rule 400. Expungement of Criminal Record.**

Title 5, chapter 314, Virgin Islands Code, provides for the expungement of criminal records in certain instances. These rules are intended to set forth the procedures for implementing the provisions of that statute.

**Rule 400.1. Applicability of Expungement Statute.**

Petitions to expunge criminal records shall apply only to those criminal matters which are within the jurisdiction of the Superior Court of the Virgin Islands.

#### **Rule 400.2. Petition to Expunge Criminal Record.**

(a) *Petition; Filing Fee.* An individual who is the subject of a criminal record who is seeking the expungement of such record shall file a petition (See Form A below) with the Clerk of the Superior Court and pay a filing fee in the amount of \$50.00. The filing fee may be waived by the Court in cases of indigency. The individual seeking waiver of the filing fee must provide the Court with a financial disclosure affidavit and petition the Court to proceed *in forma pauperis*, pursuant to Title 4, section 513 of the Virgin Islands Code. The fee or the petition seeking waiver of that fee must be submitted when the petition is filed.

(b) *Contents of Petition.* A petition for expungement shall be signed under oath by the petitioner and shall include the following:

- (1) Petitioner's full name and all other legal names or aliases by which the petitioner has been known at any time;
- (2) Petitioner's place and date of birth;
- (3) Petitioner's current address and address at the time of the offense or alleged offense;
- (4) The offense for which the petitioner was arrested and date of such arrest;
- (5) A certified copy of the arrest report, complaint or information;
- (6) A certified copy of the petitioner's criminal record; and
- (7) A sworn statement by the petitioner that there are no charges pending against him or her.

(c) *Service of Petition.* The petitioner must serve the petition upon the Attorney General of the Virgin Islands by delivering the petition to the Department of Justice or by mailing it via certified mail, return receipt requested, to the attention of the Attorney General and shall have the burden of proving delivery and/or receipt of the petition. The Attorney General has 30 days after service to respond to the petition. If the Attorney General files an objection to the expungement petition, the Superior Court shall set the matter for a hearing. The Superior Court may also *sua sponte* schedule a hearing on the petition for expungement, despite the lack of opposition or response from the Attorney General.

(d) *Notice of Petition.* The Attorney General, Department of Justice, must notify the victim(s) of the offense for which expungement is sought and specifically inform the victim or victims of their right to be present and to submit an oral or written statement at the expungement hearing.

#### **Rule 400.3. Hearing on Petition for Expungement.**

(a) *Scheduling and Notification of Hearing.* A hearing on the petition shall be held within 90 days after service of the petition on the Attorney General, Department of Justice. The Superior Court shall notify the petitioner and the Attorney General of the date, time and place of the hearing. The Attorney General, Department of Justice, shall notify the victim or victims of the offense for which expungement is sought of the date, time and place of the hearing.

(b) *Victim Impact Statement.* The victim(s) of the offense for which expungement is sought has a right to submit an oral or written statement to the court at the time of the hearing or within 90 days of service of the petition, describing the harm suffered by the victim as a result of the crime and the victim's recommendation on whether expungement should be granted or denied. The judge shall consider the victim's statement when rendering a decision.

(c) *Other Factors.* In rendering its decision, the judge shall also consider whether the petitioner is legally and gainfully employed, is enrolled in and attending school, is enlisted in the armed forces, has not been charged with or convicted of any other offenses since the offense for which he is seeking expungement, has no pending cases, and such other factors that the court may deem relevant.

#### **Rule 400.4. Expungement of Criminal Records**

The arrest records of crimes committed against the laws of the United States Virgin Islands, which are within the jurisdiction of the Superior Court, including fingerprints, mugshots and DNA samples, and any other police or judicial proceedings records of an individual may be expunged by petition to the Superior Court of the Virgin Islands when:

(1) the petitioner has successfully completed the Pretrial Intervention Program under title 5, Virgin Islands Code, section 4611 et seq.;

(2) the petitioner has received a Statement of Nolle Prosequi because the Attorney General, Department of Justice, is unable to meet its burden of proof;

(3) the petitioner's case has been dismissed with prejudice and he has no other charges or arrest pending against him; or

(4) the petitioner was arrested but no complaint or information has been filed and the statute of limitation has expired.

#### **Rule 400.5. Expungement for No Conviction.**

(a) All records of an arrest, a criminal complaint or information must be expunged by petition to the Superior Court of the Virgin Islands in the following instances:

(1) where the case has been dismissed without prejudice and the statute of limitation has expired.

(2) where the case has been tried and there has been an acquittal.

(3) where there is a statement of nolle prosequi and the Attorney General, Department of Justice, has not filed the information or complaint and the statute of limitation has expired.

(b) The records of an arrest, a complaint or information that does not result in a conviction may be expunged by petition to the court except:

(1) where a person flees the jurisdiction to avoid prosecution; or

(2) where a person has a subsequent arrest, unless there are extraordinary circumstances to which the court finds expungement in the best interest of public policy.

(c) Service of the petition must be made on the Attorney General of the Virgin Islands, who shall submit to the Court notification of service on the victim(s) in that case. The Court shall act on the petition for expungement filed under subsection (a) 90 days after service of the same.



**Rule 400.6. Expungement of Misdemeanor Conviction.**

A person who wishes to have his record expunged of a misdemeanor conviction must petition the Superior Court of the Virgin Islands in accordance with the rules herein. Service of the petition shall be made on the Attorney General and the victim(s), in accordance with these rules.

**Rule 400.6.1. Eligible Misdemeanors.**

(a) *Misdemeanors Where Maximum Term of Incarceration Is Less Than Six Months.* In all cases wherein a person has been convicted of a misdemeanor where the maximum term of incarceration is less than six months, whether the person has served a term of incarceration and/or placed on probation, that person, after the expiration of a period of two years from the date of his conviction, payment of fine, satisfactory completion of probation or release from incarceration, whichever is later, may present a petition for expungement of the conviction pursuant to the rules contained herein.

(b) *Misdemeanors Where Maximum Term of Incarceration Is Six Months or More.* In all cases wherein a person has been convicted of a misdemeanor where the maximum term of incarceration is six months but not more than one year, and the misdemeanor does not involve violence or the threat of violence to the person of another, an act of domestic violence, that person, after the expiration of a period of five years from the day of his conviction, payment of fine, satisfactory completion of probation or release from incarceration, whichever is later, may present a petition for expungement of the conviction pursuant to the rules contained herein.

(c) *Misdemeanors Involving Violence or Threat of Violence.* In all cases wherein a person has been convicted of a misdemeanor where the maximum term of incarceration is six months but not more than one year, and the misdemeanor involved violence or the threat of violence to the person of another, an act of domestic violence, that person, after the expiration of a period of ten years from the day of his conviction, payment of fine, satisfactory completion of probation or release from incarceration, whichever is later, may present a petition for expungement of the conviction pursuant to the rules contained herein.

(d) *Miscellaneous Misdemeanors, Sexual Offenses.* In all cases wherein a person has been convicted of a sexual offense for which he/she is required to register under 14 V.I.C. § 1722, et seq., the Court may not enter an order expunging the underlying offense until expiration of the reporting time requirements outlined in that statute and related provisions.

**Rule 400.7. Expungement Prohibited.**

The criminal records of other jurisdictions, including federal agencies, may not be expunged by petition to the Superior Court of the Virgin Islands.

**Rule 400.8. Expungement Order.**

Upon entry of the order by a judge of the Superior Court, the Superior Court of the Virgin Islands

shall cause a certified copy of the expungement order to be delivered to the Commissioner of the Virgin Islands Police Department.

**Rule 400.9. [repealed]**

**Rule 400.10. Expunged Records; Disclosure and Court Procedure.**

(a) A petition for expungement results in the opening of a civil miscellaneous case in the Superior Court. Such civil case shall include a reference to the criminal case to which it relates, which shall be noted under the civil number. Petitions for expungement shall be captioned as follows: IN RE PETITION FOR EXPUNGEMENT OF CRIMINAL RECORDS CONCERNING (insert petitioner's name).

(b) Upon entry of an order of expungement, the Court shall order that the Clerk of the Court seal the Civil case and all related Criminal cases to which the expungement order relates. The case numbers shall be noted on the outside of the sealed case, along with the notation, "Open Only Upon Order of the Court." The Court shall retain a record of expunged/sealed cases in a secure location, separate and apart from other criminal filings and shall retain a confidential ledger of all such cases ordered expunged and sealed by the Court.

(c) Records expunged by order of the Court shall not be open for public or other inspection, absent an order of the Court providing for unsealing or disclosure of the same in accordance with law. The Clerk is also prohibited from disclosure of such records, or of the fact of their existence, in response to record searches submitted to the Court. To implement this provision, the Clerk must take steps to prohibit disclosure via electronic means, by flagging and redacting, as appropriate, all criminal and civil cases in which an order of expungement has been entered.

(d) The Superior Court of the Virgin Islands may order the disclosure of the expunged conviction records to the following:

- (1) a court when preparing a presentence report, when conducting jury selection, when considering detention of the individual, or when setting bail for the individual; and
- (2) an agency of the territorial or federal government that is considering the individual for employment.

## **PART XI. ELECTRONIC FILING**

**Rule 420. [repealed]**

**Rule 420.1. [repealed]**

**Rule 420.2. [repealed]**

**Rule 420.3. [repealed]**

**Rule 420.4. [repealed]**

**Rule 420.5. [repealed]**

**Rule 420.6. [repealed]**

**Rule 420.7. [repealed]**

**Rule 420.8. [repealed]**

**Rule 420.9. [repealed]**

**Rule 420.10. [repealed]**

**Rule 420.11. [repealed]**