

**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 [repealed]**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 [repealed]**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 [repealed]**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 [repealed]**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 [repealed]**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 [repealed]**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 [repealed]**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 [repealed]**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 [repealed]**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 [repealed]**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 [repealed]**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]**