IN THE SUPREME COURT OF THE VIRGIN ISLANDS

IN RE: **AMENDMENTS TO THE VIRGIN ISLANDS SUPREME COURT RULES OF APPELLATE PROCEDURE AND RULES GOVERNING APPOINTMENT OF COUNSEL TO REPRESENT INGIDENT PARTIES ON APPEAL.**	)))))))))))	**PROMULGATION No. 2011-003**

ORDER OF THE COURT

This Court, pursuant to the authority granted to it by section 21(c) of the Revised Organic Act of 1954, as amended, and title 4, sections 32(e), 32(f)(2), and 34(a) of the Virgin Islands Code, as well as its inherent authority, hereby releases, for comment, the following proposed amendments to the Virgin Islands Rules of Appellate Procedure and the Rules Governing the Appointment of Counsel to Represent Indigent Parties on Appeal, attached as Exhibit 1 and Exhibit 2. As a convenience, Exhibit 3 and Exhibit 4 illustrate which language has been inserted and stricken in each set of rules. Although these amendments shall not come into effect unless adopted by the Court in a subsequent order, it is anticipated that—if adopted—they will take effect on November 2, 2011. Accordingly, it is hereby

ORDERED that the Rules of Appellate Procedure, as amended, attached hereto as Exhibit 1, **ARE HEREBY RELEASED** for comments from the public and the local Bench and bar. It is further

ORDERED that the Rules Governing Appointment of Counsel to Represent Indigent Parties on Appeal, as amended, attached hereto as Exhibit 2, **ARE HEREBY RELEASED** for comments from the public and the local Bench and bar. It is further

ORDERED that, although Exhibit 3 and Exhibit 4 attempt to illustrate the proposed changes to the Rules of Appellate Procedure and the Rules Governing Appointment of Counsel to Represent Indigent Parties on Appeal, members of the Bench, the public, and the local bar are **ADVISED** that Exhibit 3 and Exhibit 4 are provided solely for convenience and that, in the event of a discrepancy, the rules as they are set forth in Exhibit 1 and Exhibit 2 shall be controlling. It is further

ORDERED that, pursuant to V.I.S.CT.R. 37, the public as well as members of the local Bench and bar **MAY SUBMIT WRITTEN COMMENTS** on these proposed amendments to the Clerk of the Court within thirty (30) days of entry of this order. It is further

ORDERED that copies of this order be directed to the appropriate parties.

SO ORDERED this 28th day of September, 2011.

_____/s/_____
RHYS S. HODGE
Chief Justice

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

EXHIBIT 1

VIRGIN ISLANDS SUPREME COURT RULES
(as amended)

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- **(d) Relationship to Previous Rules**
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VIRGIN ISLANDS SUPREME COURT RULES

Rule 1. Scope of Rules; Terms; Sessions; Seal; Filing in Superior Court.

(a) **Title and Citation.** These Rules shall be known as the Virgin Islands Supreme Court Rules. They shall be cited as V.I.S.CT.R. in the long form, and VISCR in the short form.

(b) **Scope of Rules.** These Rules govern procedure in all proceedings in the Supreme Court of the Virgin Islands [“Supreme Court”].

(c) **Authority for Promulgation of Rules.** These Rules are promulgated pursuant to the authority granted by V.I. CODE ANN. tit. 4, §§ 31(c) and 34(a), and section 3 of Act No. 6687, as enabled by sections 21(a) and (c) of the Revised Organic Act of 1954; 48 U.S.C. § 1613a. The Revised Organic Act of 1954 is found at 48 U.S.C §§ 1541-1645 (1995), *reprinted in* V.I. CODE ANN., Historical Documents, Organic Acts, and U.S. Constitution at 73-177 (1995 & Supp. 1997) (preceding V.I. CODE ANN., tit. 1).

(d) **Relationship to Previous Rules.** These Rules supersede all previous appellate rules applicable to appeals from the Superior Court of the Virgin Islands. They shall govern all appeals filed in this Court from the Superior Court on or after January 29, 2007. Appeals taken to and pending in the Appellate Division of the District Court prior to January 29, 2007 shall be governed by the appellate rules then in effect as promulgated by the Appellate Division of the District Court.

(e) **Term of Court.** There shall be one term of the Court which shall coincide with the calendar year. Oral arguments will be scheduled as provided in Rule 27 or as otherwise ordered by the Court.

(f) **Court Sessions**. The Court shall hold regular sessions on the island of St. Croix commencing on such dates as the Court shall designate. Special sessions may be held at any time or place within the Virgin Islands when so ordered by the Court.

(g) **Court Seal**. The seal of the Court shall be the seal specified by 4 V. I. C. § 21(d). The Clerk is the custodian of the seal, which is the means of authentication of all process, orders, and other papers requiring authentication by the court.

(h) **Filing in Superior Court**. When these rules provide for filing a motion or other document in the Superior Court of the Virgin Islands, the procedure must comply with the practice of the Superior Court.

(i) **Rules Not to Affect Jurisdiction.** These rules shall not be considered to extend or limit the jurisdiction of the Supreme Court of the Virgin Islands as established by law. Where the time to appeal or seek other relief is set by statute, provisions in these rules for granting an enlargement or extension of time to file a notice of appeal or other document shall not be applicable to extend the statutory time limit.

Rule 2. Suspension of Rules.

In the interest of expediting decision, or for other good cause shown, the Court, the Chief Justice of the Supreme Court of the Virgin Islands, or any panel of the Court acting through its presiding justice may suspend the requirements or provisions of any of these Rules in a particular case on their own motion or on application of a party, specifying in an order the procedure required, except that the time for filing a notice of appeal or a request for permission to appeal

through certification, out of time, or as otherwise prescribed by law, may only be enlarged pursuant to Rule 5.

Rule 3. Payment of Docket Fees.

(a) **Payment of Docket Fees and Permission to Proceed *In Forma Pauperis*.** All appeals, petitions for writ of mandamus, habeas corpus, or other extraordinary writs, and any other documents which initiate a new proceeding in the Supreme Court must be accompanied by the appropriate docket fee, deposited with the Clerk of the Supreme Court, unless permission to proceed *in forma pauperis* ["IFP"] has been granted. If a proceeding is docketed without prepayment of the applicable docketing fee, the appellant shall pay the fee within fourteen days after docketing. If the appellant fails to do so and has not filed a motion to proceed IFP accompanied by supporting documents, the Clerk of the Supreme Court is authorized to dismiss the appeal without further notice.

(b) ***In Forma Pauperis*.** A party to a civil or criminal appeal or other Supreme Court proceeding who desires to proceed IFP shall file a motion for leave so to proceed, together with an affidavit and other documentation (full financial disclosure), showing, in detail, the party's inability to pay fees and costs or to give security therefor, the party's belief that the party is entitled to redress, and a statement of the issues which that party intends to present on appeal. Motions to proceed IFP shall conform with 4 V.I.C. § 513 as well as Supreme Court Rule 210 and will be determined by the Supreme Court. If the motion is granted, the party may proceed without further application and without prepayment of fees or costs in either the Supreme Court or Superior Court or the giving of security therefor. If the motion is denied, the Supreme Court shall state in writing the reasons for the denial.

(c) ***In Forma Pauperis* Status in Criminal Matters.** In criminal matters, IFP status will continue on appeal if appellant or petitioner has been permitted to proceed IFP by the Superior Court as one who is financially unable to obtain adequate defense, although the Supreme Court may, consistent with Supreme Court Rule 210, continue to inquire as to whether the appellant or petitioner continues to meet the requirements for IFP status. IFP status will not be continued if, before or after the notice of appeal is filed, the Superior Court certifies that the appeal is not taken in good faith or finds that the party is otherwise not entitled to continue to proceed IFP, in which event the Superior Court shall state in writing the reasons for such certification or finding. Supreme Court Rule 210 shall govern appointment of appellate counsel for criminal defendants who qualify for IFP status.

Rule 4. Appeal as of Right - How Taken.

(a) **Filing the Notice of Appeal.** An appeal permitted by law as of right from the Superior Court to the Supreme Court shall be taken by filing a notice of appeal with the Clerk of the Supreme Court within the time allowed by Rule 5. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the Supreme Court deems appropriate, which may include dismissal of the appeal.

(b) **Joint or Consolidated Appeals.** If two or more persons are entitled to appeal from a judgment or order of the Superior Court and their interests are such that joinder is practicable, they may file a joint notice of appeal, or may join in an appeal after filing separate timely notices

of appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the Supreme Court upon its own motion, upon motion of a party, or by stipulation of the parties to the several appeals. When parties have filed a joint notice of appeal, only one appeal will be docketed and only one docketing fee paid. Parties filing a joint notice of appeal shall file a single consolidated brief and appendix. When the parties have filed separate notices of appeal, each party shall pay a separate docket fee, but the appeals may be joined or consolidated by the Supreme Court.

(c) **Content of the Notice of Appeal.** The notice of appeal shall specify the party or parties taking the appeal and, if not electronically filed, their physical addresses and telephone numbers; shall designate the judgment, order, or part thereof appealed from and the reason(s) or issue(s) to be presented on appeal. An appeal shall not be dismissed solely for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice**,** but any omission of matters of substance may be grounds for sanctions.

(d) **Service of the Notice of Appeal.** Appellant shall electronically or conventionally, as the case may be, serve notice of the filing of a notice of appeal in accordance with Rules 15 and 40.3 on counsel of record for each party other than the appellant, or, if a party is not represented by counsel, by conventional service to the last known address of that party; and shall file a certificate of service with the notice of appeal. After docketing a notice of appeal, the Clerk of the Supreme Court shall promptly transmit a copy of the notice of appeal to the Clerk of the Superior Court, who shall transmit forthwith a designation of the parties and a certified list of the docket entries to the Clerk of the Supreme Court, whether or not motions are pending, and begin assembling the record. When an appeal is taken in a criminal case, counsel shall also conventionally serve a copy of the notice of appeal upon the defendant, either by personal service or by mail addressed to the defendant. Appellant shall note on each copy served the date on which the notice of appeal was filed. Failure of appellant to serve notice shall not affect the validity of the appeal, but may be cause for sanctions. Service shall be sufficient not-withstanding the death of a party or the party's counsel. The Clerk of the Supreme Court shall note in the docket the names of the parties to whom the appellant served copies, with the date of service as indicated on the certificate of service.

(e) **Payment of Fees.** Upon the filing of any separate or joint notice of appeal, the appellant shall pay to the Clerk of the Supreme Court such fees as are required and referenced in Rule 3.

(f) **Notice to Trial Judge; Opinion in Support of Order.** At the time of the filing of the notice of appeal, the appellant shall mail a copy thereof by ordinary mail to the trial judge. Within fifteen days thereafter, the trial judge may file and mail to the parties and the Clerk of the Supreme Court a written opinion or a written amplification of an earlier written or oral recorded ruling or opinion. Failure to give notice of the appeal to the trial judge shall not affect the jurisdiction of the Supreme Court.

(g) **Notice of Appeal in *Pro Se* Cases.** The Supreme Court and the Superior Court shall deem a paper filed by a *pro se* litigant after the decision of the Superior Court in a civil or criminal case, or in a habeas corpus case, to be a notice of appeal despite informality in its form or title if it evidences an intention to appeal. The Supreme Court and the Superior Court shall deem an application for leave to appeal IFP or any other document expressing an intent to appeal to be a notice of appeal if no formal notice has been filed.

(h) **Questions Which May be Raised on Appeal.** Only questions fairly presented to the

Superior Court may be presented for review; provided, however, that when the interests of justice so require, the Supreme Court may consider and determine any question not so presented.

Rule 5. Appeal as of Right - When Taken.

(a) **Appeals in Civil Cases.**

(1) In a civil case in which an appeal is permitted by law as of right from the Superior Court to the Supreme Court, the notice of appeal required by Rule 4 shall be filed with the Clerk of the Supreme Court within thirty days after the date of entry of the judgment or order appealed from; but if the Government of the Virgin Islands or the United States of America_or an officer or agency thereof is a party, the notice of appeal may be filed by any party within sixty days after such entry. 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) To be appealable as of right, an order of the Superior Court must either be final or must be classified within the categories of interlocutory orders specified in 4 V.I.C. Sections 33(b) and (c).

(3) If one party timely files a notice of appeal, any other party may file a notice of appeal within fourteen days after the date on which the first notice of appeal was filed, or within the time otherwise prescribed by statute or by this Rule, whichever period last expires.

(4) If any party timely files in the Superior Court a motion for judgment as a matter of law; to amend findings or make additional findings; for a new trial; to reconsider, alter or amend the judgment or order; or (if filed within twenty-eight days) for relief from the judgment or order, is extended until 30 days after_entry of an order disposing of the last such motion; provided, that the failure to dispose of any motion by order entered upon the record within 90 days after the date the motion was filed shall constitute a denial of the motion for purposes of appeal.

A notice of appeal filed after announcement or entry of the judgment but before disposition of any of the above motions is ineffective to appeal from the judgment or order, or part thereof, specified in the notice of appeal, until the date of the entry of the order disposing of the last such motion outstanding or 90 days after the date the last such motion was filed. Appellate review of an order disposing of any of the above motions requires the party, in compliance with Rule 4(c), to amend a previously filed notice of appeal. A party intending to challenge an alteration or amendment of the judgment shall file with the Clerk of the Supreme Court a notice or an amended notice of appeal within the time prescribed by this Rule 5, measured from the entry of the order disposing of the last such motion outstanding. No additional fees will be required for filing an amended notice. A motion for attorney's fees shall not affect the running of the time for appeal.

(5) The Superior Court shall have authority to consider and deny any motion for relief from a judgment or order that is filed more than twenty-eight days after the final judgment or order is entered. If the Superior Court would otherwise be disposed to grant such a motion, it shall so notify the Supreme Court and request that the entire matter be remanded to the Superior Court for further action. The Supreme Court shall grant such request in its discretion, taking into consideration the interests of judicial efficiency and the possibility of abuse. The Superior Court shall, if a notice of appeal has been filed, have no authority to grant motions specified in Rule 5(a)(4) that have either been untimely filed or have been deemed denied due to the expiration of the ninety day period provided, but may notify the Supreme Court of its intent to grant such a

motion. The untimely filing of such motions shall not affect the time for appeal or the jurisdiction of the Supreme Court over the appeal.

(6) The appellant shall promptly file in the Supreme Court notice of the filing or pendency of any motion in the Superior Court and, in addition, shall file the Superior Court's resolution no later than fourteen days after the trial court disposes of the motion. If the Superior Court fails to rule on a timely filed motion authorized by Rule 5(a)(4) within ninety days, the appellant shall notify the Supreme Court of this fact in the notice of appeal or, if a notice of appeal had previously been filed, no later than fourteen days after the expiration of the ninety-day period. It is the responsibility of the appellant to keep the Supreme Court apprised of any change in the status of any action that may affect the appeal. Failure to follow this Rule may result in sanctions.

(7) The Clerk of the Superior Court shall transmit to the Clerk of the Supreme Court copies of any motions filed or orders entered in the Superior Court after the notice of appeal is filed.

(8) The Superior Court, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal upon motion filed not later than thirty days after the expiration of the time prescribed by this Rule 5(a); provided, however, that the Supreme Court may, *sua sponte* or on motion, take any appropriate action, including, but not limited to, making the excusable neglect or good cause determination and ruling on the motion in the first instance, if the Superior Court fails to act on the extension request within 60 days. Any such motion must be served upon the remaining parties. Notice of appeal or any motion for extension of time which is filed after expiration of the prescribed time shall be given to the other parties in accordance with the rules of the Supreme Court or the Superior Court, as the case may be. No such extension shall exceed thirty days past such prescribed time or fourteen days from the date of entry of the order granting the motion, whichever occurs later.

(9) A judgment or order is entered within the meaning of this Rule when it is entered in the docket in compliance with Superior Court Rule 49. Failure of the Superior Court to enter a separate document representing the judgment and/or order shall not toll the time for appeal. The time for appeal begins upon the entry of the final order into the docket.

(10) The Superior Court, if it finds (a) that a party entitled to notice of the entry of a judgment or order did not receive such notice from the Clerk of the Superior Court or any party and (b) that no party would be substantially prejudiced, may, upon motion filed within ninety days of entry of the judgment or order or within fourteen days of receipt of such notice, whichever is earlier, reopen the time for appeal for a period of fourteen days from the date of entry of the order reopening the time for appeal, provided, however, that the Supreme Court may, *sua sponte* or on motion, take any appropriate action, including, but not limited to, making the determination and ruling on the motion in the first instance, if the Superior Court fails to act on the request to reopen within 60 days. This Rule shall not be construed as excusing the parties from their affirmative responsibility to regularly monitor the status of their case in the Superior Court.

(11) If a notice of appeal is mistakenly filed in the Superior Court, the Clerk of the Superior Court shall note thereon the date when the Clerk received the notice and transmit it to the Clerk of the Supreme Court and it shall be deemed filed in the Supreme Court on the date so noted by the Clerk of the Superior Court.

(b) **Appeals in Criminal Cases.**

(1) In a criminal case, a defendant shall file the notice of appeal in the Supreme Court

within thirty days after the entry of (i) the judgment or order appealed from or (ii) a notice of appeal by the Government. A notice of appeal filed after the announcement of a decision, sentence, 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) If any party timely files a motion for judgment of acquittal or for a new trial (on a ground other than newly discovered evidence), the time for filing the notice of appeal for all parties is extended until 30 days after entry of the order disposing of the last such motion outstanding; to toll the time to file a notice of appeal, a motion for a new trial based on newly discovered evidence must be filed within thirty days of the date of the date of the final judgment or order.

A notice of appeal filed after the Superior Court announces a decision, sentence, or order but before it disposes of any of the above motions, if the motion was timely filed, is ineffective until the date of the entry of the order disposing of the last such timely filed motion outstanding, or until the date of the entry of the judgment of conviction, whichever is later. Notwithstanding the provisions of Rule 4(c), a valid notice of appeal is effective without amendment to appeal from an order disposing of any of the above motions.

When an appeal by the Government is authorized by statute (as under 4 V.I.C. Section 33(d)), the notice of appeal shall be filed in the Supreme Court within thirty days after (i) the entry of the judgment or order appealed from or (ii) the filing of a notice of appeal by any defendant.

(3) The filing of a notice of appeal under this Rule 5(b) does not divest the Superior Court of jurisdiction to correct a sentence; nor does the filing of such a motion affect the validity of a notice of appeal filed before entry of the order disposing of the motion.

The Superior Court shall have authority to consider and deny any motion for a new trial based on the ground of newly discovered evidence that is filed more than fourteen days after the final judgment or order is entered. If the Superior Court would otherwise be disposed to grant such a motion that is filed more than fourteen days after entry of judgment or order, it shall so notify the Supreme Court and request that the entire matter be remanded to the Superior Court for further action. The Supreme Court shall grant such request in its discretion, taking into consideration the interests of judicial efficiency and the possibility of abuse. The Superior Court shall have no authority to grant motions specified in Rule 5(b)(2) that have been untimely filed, but may notify the Supreme Court of its intent to grant such a motion. The untimely filing of such motions shall not affect the time for appeal or the jurisdiction of the Supreme Court over the appeal.

(4) The appellant shall promptly file in the Supreme Court notice of the filing or pendency of any motion in the lower court and, in addition, shall file the Superior Court's resolution no later than fourteen days after the trial court disposes of the motion. It is the responsibility of the appellant to keep the Supreme Court apprised of any change in the status of any action that may affect the appeal. Failure to follow this Rule may result in sanctions.

(5) The Clerk of the Superior Court shall transmit to the Clerk of the Supreme Court copies of any motions filed or orders entered in the Superior Court action after the notice of appeal is filed.

(6) A judgment or order is entered within the meaning of this subdivision when it is entered on the criminal docket. Upon a showing of excusable neglect or good cause, the Superior Court may -- before or after the time has expired, with or without motion and notice -- extend the time for filing a notice of appeal for a period not to exceed thirty days from the expiration of the

time otherwise prescribed by this subdivision; provided, however, that the Supreme Court may, *sua sponte* or on motion, take any appropriate action, including, but not limited to, making the excusable neglect or good cause determination and ruling on the motion in the first instance, if the Superior Court fails to act on the extension request within 60 days. Notice of appeal or any motion for extension of time which is filed after expiration of the prescribed time shall be served on the other parties in accordance with the rules of the Supreme Court or the Superior Court, as the case may be.

(7) If a notice of appeal is mistakenly filed in the Superior Court, the Clerk of the Superior Court shall note thereon the date on which it was received and electronically transmit it to the Clerk of the Supreme Court, and it shall be deemed filed in the Supreme Court on the date so filed in the Superior Court.

(c) **Appeal by an Inmate Confined in an Institution.** If an inmate confined in an institution outside the boundaries of the Virgin Islands files a notice of appeal, in either a civil or criminal case, of a Superior Court judgment or appealable order in a civil or criminal case, the notice is timely filed if it is deposited in the institution's internal mail system on or before the last day for filing. Timely filing may be shown by a notarized statement by the Warden or individual in charge of the institution setting forth the date of deposit and stating that first-class postage has been prepaid. All other documentation indicating proof of deposit and mailing shall accompany the motion to deem filed.

(d) **Appeals in Juvenile Matters.** Appeals in juvenile matters to the Supreme Court from the Superior Court may be taken as a matter of right. The time to appeal and related procedures are governed by Rule 5(b), *Appeals in Criminal Cases*, and requests for a stay of a judgment or order of the Superior Court shall be governed by Rule 8(b). In all appeals contesting transfer of juveniles pursuant to 5 V.I.C. §§ 2508 and 2509, appellant shall move for expedited review under Rule 5(e).

(e) **Expedited Appeals.** A party who seeks an expedited appeal shall, within fourteen days of the notice of appeal, file with the Supreme Court a motion setting forth the exceptional reason that warrants expedition. Opposition, if any, to expedited treatment shall be filed within ten days thereafter unless otherwise directed by the Court.

(f) **Case Caption.** The case caption should list the appellant(s) v. appellee(s), in that order. Reference should also be made to parties' titles in the lower court action. Nominal appellees should be identified below the initial caption with their lower court titles. Juvenile appellants or appellees should be identified only by their initials.

Rule 6. Appeals by Permission.

(a) **Petition for Permission to Appeal**. An appeal from an order in a civil action, under 4 V.I.C. Section 33 (c), containing the statement by a Superior Court judge that such order involves a controlling question of law about which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation; may be sought by filing a petition for permission to appeal with the Clerk of the Supreme Court within ten days after the entry of such order in the Superior Court with proof of service on all other parties to the action in the lower court. An order as defined in this paragraph may be amended at any time to include the prescribed statement, and permission to appeal may be sought within fourteen days after entry of the order as amended.

(b) **Motion for Expedited Review.** In all interlocutory appeals, appellant shall move for

expedited review under Rule 5(e). Failure to so request may result in sanctions upon the attorney or party.

(c) **Content of Petition; Answer**. The petition shall not exceed ten pages in length. The petition shall include or have annexed thereto a copy of the order from which appeal is sought and of any findings of fact, conclusions of law, and opinion relating thereto. Petitions for appeals from an order pursuant to paragraph (a)(iii) also shall contain a statement of the facts necessary to understand the controlling question of law determined by the order of the Superior Court; a concise statement of the issue(s) to be presented; and a statement of the reasons why a substantial basis exists for a difference of opinion on the question and why an immediate appeal may materially advance the termination of the litigation.

Within ten days after service of the petition, an adverse party may file an answer in opposition not more than five pages in length. The application and answer shall be submitted without oral argument unless otherwise ordered.

(d) **Number of Copies**. Pursuant to Rule 40.3(h), no paper copies of electronically filed petitions need be filed with the Court. If a party is exempt from electronic filing, or if electronic filing has been disallowed, an original and three copies of the petition for permission to appeal pursuant to this Rule must be conventionally filed unless otherwise ordered by this Court.

(e) **Grant of Permission; Cost Bond**. Within fourteen days after the entry of an order granting permission to appeal, the appellant shall (1) pay to the Clerk of the Supreme Court such fees as are required and referenced in Rule 3, and (2) file a bond for costs if required by the Supreme Court. The Clerk of the Supreme Court shall notify the Clerk of the Superior Court forthwith if such permission to appeal is granted. Upon receipt of such notice, the Clerk of the Superior Court shall notify the Superior Court judge that permission to appeal was granted and transmit the record to the Clerk of the Supreme Court in accordance with Rules 10 and 11. The petition shall be construed as notice of appeal.

Rule 7. Appellate Mediation and Conciliation.

(a) **How Initiated**. Civil appeals to the Supreme Court may be referred to a mediator to meet with counsel and parties to facilitate settlement of the case, simplify issues, or otherwise assist in the expeditious handling of an appeal.

(b) **Attendance at Sessions.** Mediation sessions must be attended by each party, or another person with actual authority to settle the case, and their counsel. Failure of counsel to attend sessions may result in the imposition of sanctions, including dismissal of the appeal. Counsel is not required for parties appearing *pro se*.

(c) **Clerk as Administrator; Case Selection.** The Clerk of the Supreme Court shall serve as the program administrator of the Appellate Mediation Program. A party may request mediation, but the Chief Justice will determine which cases are appropriate for mediation. Case selection will usually take place approximately thirty days after a case has been docketed for appeal. Counsel of record will receive notice of case selection and of the mediator assigned. An initial mediation session will be scheduled by the mediator within thirty days of a case's selection for mediation, with additional sessions to be scheduled as needed.

(d) **Submission and Service of Papers**. The Clerk will provide the mediator with a copy of the judgment, opinion, and/or order on appeal, the appeal information statement, the appellant's statement of issues on appeal, and all relevant motions. Upon request of the mediator, counsel shall prepare and submit to the mediator a position paper of no more than ten pages

(double spaced), stating their parties' views on the key facts and legal issues in the case. The position paper will include a statement of motions filed and their status. All motions filed or decided while mediation is underway are to be identified for the mediator and submitted to her or him upon request. Copies of documents submitted to the mediator should be served upon opposing counsel unless the mediator excuses such service. Documents prepared for mediation sessions are not to be filed with the Clerk except as noted below.

(e) **Argument Schedule; Motion to Postpone**. All cases in mediation remain subject to normal scheduling for briefing and oral argument. If it is the mediator's view that additional mediation sessions are required and that such sessions would affect the briefing schedule in the case, counsel shall request an extension by filing a joint motion to defer or postpone the briefing, oral argument, and/or consideration date(s). Counsel shall represent that the mediator concurs in the request.

(f) **Privileged Discussions**. The content of mediation discussions and proceedings, including any statement made or document prepared by any party, attorney, or other participant, is privileged and shall not be disclosed to the Supreme Court or construed for any purpose as an admission against interest. To that end, the parties shall not file any motions or other document that would disclose any information about the content of a mediation, whether or not it has been concluded. This means that parties are prohibited from using any information obtained as a result of the mediation process as a basis for any motion other than a motion affecting the briefing or argument schedule.

(g) **Mediation Not Binding**. No party shall be bound by anything said or done at a mediation session unless a settlement is reached. If a settlement is reached, the agreement shall be reduced to writing and shall be binding upon all parties to the agreement.

(h) **Costs**. Mediators shall be compensated by the parties. The Court may determine the reasonableness of the fees charged by the mediator. In the absence of a written agreement providing for the mediator's compensation, the mediator shall be compensated at the hourly rate set by the Court in the order referring the matter to mediation. Each party shall pay one-half or such other proportionate share of the total charges of the mediators as may be agreed upon, unless the mediator and/or the Court determines that one party has not mediated in good faith.

(i) **Selection of Mediator.** Mediators for the Supreme Court will be selected by the Court from those qualified by either the Supreme Court or the Superior Court.

(j) **Settlement.** If a case is settled, the mediator or counsel shall file a stipulation of dismissal. Such stipulation must be filed within fifteen days after the settlement is reached unless a short extension is requested by counsel by motion. If a case cannot be resolved through mediation, the parties shall so inform the Court within ten days after the last mediation session, and the matter will remain on the docket and proceed as if mediation had not been initiated.

Rule 8. Bond and Stay or Injunction Pending Appeal in Civil Case; Release Pending Appeal in Criminal Case.

(a) **Bond or Other Security in Civil Case.** The Superior Court may require an appellant in a civil case to file a bond or provide other security in such form and amount as it finds necessary to ensure payment of costs on appeal, including attorney’s fees, pursuant to the applicable Rules of the Superior Court. In the event the Superior Court chooses to require a cost bond, the Clerk of the Superior Court shall immediately notify the Clerk of the Supreme Court that a bond requirement has been set and when the bond has been paid.

(b) **Requests for a Stay of Judgment or Order of Superior Court in Civil Case.** Requests for a stay of the judgment or order of the Superior Court pending appeal, for approval of a supersedeas bond, or for an order suspending, modifying, restoring, or granting an injunction during the pendency of an appeal in a civil case must ordinarily be made in the first instance to the Superior Court. When a matter is before the Superior Court, its rules respecting time periods, practices, and procedures apply. A motion for such relief may be made to the Supreme Court, but the motion shall show that application to the Superior Court for the relief sought is not practicable, or that the Superior Court has denied an application, or has failed to afford the relief which the applicant requested, with the reasons given by the Superior Court for its action. The motion shall also show the reasons for the relief requested and the facts relied upon, and, if the facts are subject to dispute, the motion shall be supported by affidavits, other sworn statements or copies thereof, and documentation demonstrating ownership, liens or other encumbrances, and availability of resources offered as security. With the motion shall be filed such parts of the record as are relevant. An original and three copies of the motion and any accompanying documents shall be filed with the Supreme Court. Reasonable notice of the motion shall be given to all parties. The motion shall be filed with the Clerk of the Supreme Court and normally will be considered by a three judge panel, but in exceptional cases where such procedure would be impracticable due to the requirements of time, the application will be decided by the Chief Justice of the Supreme Court.

(c) **Conditioning Stay upon Giving of Bond in Civil Case.** Relief available in the Supreme Court under this Rule may be conditioned upon the filing of a bond or other appropriate security in the Superior Court. If security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the Superior Court and irrevocably appoints the Clerk of the Superior Court as the surety's agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. A surety's liability may be enforced on motion in the Superior Court without the necessity of an independent action. The motion and such notice of the motion as the Superior Court prescribes may be served on the Clerk of the Superior Court who shall forthwith mail copies to the sureties if their addresses are known.

(d) **Motions for Release Pending Appeal in Criminal Case.** Motions for release pending appeal in a criminal case must ordinarily be presented in the first instance to the Superior Court. If the Superior Court refuses release pending appeal, or imposes conditions of release, the judge shall state in writing the reasons for the action taken. If a hearing occurred in the Superior Court addressing the issue of release, four copies of the transcript shall be filed with the Supreme Court. Earlier-imposed conditions shall be documented in the motion for release, and the conditions, rules, and documentation referenced in the preceding paragraph 8(c) apply as well. After reasonable notice to the non-movant, the motion shall be determined promptly upon such papers, affidavits, and portions of the record as the parties shall present or as the Supreme Court may require. The motion normally will be considered by a three judge panel, but in exceptional cases where such procedure would be impracticable due to the requirements of time, the application may be decided by the Chief Justice of the Supreme Court, who may order the release of the appellant pending disposition of the motion.

The decision regarding release must be made in accordance with Virgin Islands law, including 4 V.I.C. Section 33(d)(4), as it may be supplemented by court rule. The movant has the burden of establishing that the defendant will not flee or pose a danger to any other person or to the community, that the appeal was not filed for delay, and that it raises a substantial question of

law or fact likely to result in reversal or in an order for a new trial.

Rule 9. Pretrial Release in a Criminal Case.

(a) **Order of the Superior Court.** The Superior Court shall state in writing, or orally on the record, the reasons for an order refusing or imposing conditions of release or ordering pretrial detention of a defendant in a criminal case. A party appealing from the order, as soon as practicable after filing a notice of appeal with the Supreme Court, must file in the Supreme Court a copy of the Superior Court's order and its statement of reasons. An appellant who questions the factual basis for the Superior Court's order must timely move for expedited review under Rule 5(d) and must file a transcript of any release proceedings in the Superior Court or an explanation why a transcript has not been obtained. The appeal shall be heard, after reasonable notice to the appellee, upon such papers, affidavits, and portions of the record as the parties present or the Supreme Court may require. Briefs need not be filed unless the Supreme Court so orders.

(b) **Duties of the Clerk of the Superior Court.** The Clerk of the Superior Court shall transmit a list of docket entries within fifteen days after receiving, from the Clerk of the Supreme Court, notice of the filing of the appeal from the order refusing or imposing condition of release or ordering detention, and shall in addition inform the Supreme Court of any order or judgment entered subsequent to the forwarding of such list. The appeal normally will be considered by a three justice panel, but in exceptional cases where such procedure would be impracticable due to the requirements of time, it may be decided by the Chief Justice of the Supreme Court, who may order the release of the appellant pending disposition of the motion.

All decisions regarding release must be made in accordance with the United States Constitution, the Revised Organic Act of 1954, and Virgin Islands law.

Rule 10. The Record on Appeal.

(a) **Composition of the Record on Appeal.** The original papers and exhibits filed in the Superior Court, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the Clerk of the Superior Court shall constitute the record on appeal in all cases. The Clerk of the Superior Court shall forward to the Supreme Court a certified copy of docket entries and a copy of the order or judgment being appealed upon receipt of a copy of the notice of appeal from the Clerk of the Supreme Court. The original complete record should only be transmitted upon request by the Supreme Court.

(b) **The Transcript of Proceedings; Duty of Appellant to Order; Notice to Appellee if Partial Transcript Is Ordered.**

(1) If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion. Within fourteen days after filing the notice of appeal (or entry of the order disposing of the type of timely motion specified in Rule 5(a)(4) or 5(b)(1)), the appellant shall order from the reporter a transcript of such parts of the proceedings not already on file as the appellant deems necessary.

Orders for transcripts and/or a certificate that a particular reporter's transcript is not necessary shall be presented on the Transcript Purchase Order ["TPO"] form provided by the Clerk of the Supreme Court and shall include the name of the reporter. No other form may be used. A single TPO form shall be submitted regardless of the number of reporters who

participated in the proceeding being appealed. The TPO form shall specify which transcripts are being requested and which are not necessary, where a reporter recorded the proceeding on more than one day and one or more of those transcripts is not needed for appeal. Any unnecessary expense resulting from an ambiguous request will be the financial responsibility of the party making such request. Unless a party or attorney is exempt from electronic filing or the Supreme Court has disallowed e-filing in a particular case pursuant to Rule 40.2, the TPO form must be e-filed with the Supreme Court and served on the other parties to the action, the reporter(s), and the Clerk of the Superior Court in accordance with Rule 40.3.

(2) Unless the entire transcript is to be included, the appellant shall, within fourteen days of filing the notice of appeal (or entry of the order disposing of the type of timely motion specified in Rule 5(a)(4) or 5(b)(1)), file a statement of the issues the appellant intends to present on the appeal and shall serve on the appellee a copy of the completed TPO. If the appellee deems additional transcript(s) or other parts of the proceedings to be necessary, the appellee shall, within fourteen days after the service of the completed TPO form, file and serve on the appellant a designation of additional parts of the record to be included. Unless the appellant has ordered such parts within fourteen days after service of such designation, and has so notified the appellee, the appellee may, within the following fourteen days, either order the parts or file a motion in the Supreme Court for an order requiring the appellant to do so. If additional transcripts are needed, appellee shall file and serve a completed TPO form as indicated in subsection (1) of this Rule.

(3) At the time the transcript is ordered, a party must make satisfactory arrangements with the reporter for payment of the cost of the transcript.

(c) **Statement of the Evidence or Proceedings When No Report Was Made or When the Transcript Is Unavailable.** If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement shall be served on the appellee within fourteen days of filing the notice of appeal (or entry of the order disposing of the type of timely motion specified in Rule 5(a)(4)), and the appellee may serve objections or proposed amendments thereto within fourteen days after service. If the parties are not able to resolve any differences in the statement of the evidence or proceedings, the Supreme Court may refer the statement and any objections or proposed amendments to the Superior Court for settlement of the differences and approval, and the statement, as settled and approved, shall be returned to the Clerk of the Supreme Court as the record on appeal.

(d) **Agreed Statement of Facts on Appeal**. In lieu of the record on appeal as defined in subdivision (a) of this Rule, the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the Superior Court and setting forth only so many facts averred and proved or sought to be proved as are essential to a decision of the issues presented.

(e) **Correction or Modification of the Record.** If any difference arises over whether the record truly discloses what occurred in the Superior Court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the Supreme Court, on proper suggestion or of its own initiative, or the Superior Court, either before or after the record is transmitted to the Supreme Court, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified

and transmitted. All other questions about the form and content of the record shall be presented for decision to the Supreme Court.

Rule 11. Transmission of the Record on Appeal.

(a) **Duty of Appellant.** After filing the notice of appeal, the appellant, or in the event that more than one appeal is taken, each appellant, shall comply with the provisions of Rule 11(b) and shall take any other action necessary to enable the Clerk of the Superior Court to assemble and transmit the record to the Supreme Court. A single record shall be transmitted.

(b) **Duty of Court Reporter to Coordinate Preparation and Filing Transcript; Notice to Supreme Court; Duty of Clerk to Transmit Certified Copy of the Docket Entries in Lieu of Record; Retention of Record in Superior Court**. Upon receipt of an order for a transcript, the court reporter shall acknowledge in Part II of the TPO the fact that the court reporter has received it, the estimated number of pages, and the date on which the court reporter expects to have the transcript completed. The court reporter shall e-file the TPO form, so endorsed, to the Supreme Court and file a copy with the Clerk of the Superior Court. If the court reporter cannot complete the transcript within forty-five days of receipt of the TPO Part I, the court reporter shall request an extension of time from the Clerk of the Supreme Court and the action of the Clerk of the Supreme Court shall be entered on the docket and the parties notified. In the event of the failure of the reporter to file the transcript within the time allowed, the Clerk of the Supreme Court shall notify the Chief Justice for such action as is appropriate. Upon completion of the transcript, the court reporter shall file physical and electronic copies of the transcript with the Clerk of the Superior Court and shall notify the Clerk of the Supreme Court that the reporter has done so by completing Part III of the TPO in accordance with Rule 40.3(k). The record shall be complete when all ordered transcripts have been filed with the Clerk of the Superior Court.

When the record is complete for purposes of the appeal, the Clerk of the Superior Court shall electronically transmit the record as an e-record in accordance with Rule 40.3(j). The original file shall not be transmitted by the Superior Court Clerk unless during the pendency of the appeal the Clerk of the Supreme Court directs that designated parts of the record be transmitted.

(c) **Transmission of Record to Supreme Court.** Notwithstanding the provisions of (a) and (b) of this Rule 11, the Supreme Court may request electronic or physical_transmission of part or all of the record by the Clerk of the Superior Court in order to address a motion or the issues on appeal. Upon resolution of the motion or appeal, the Clerk of the Supreme Court shall return any portion of_the physical_record to the Superior Court that was transmitted pursuant to this Rule 11(c).

(d) **Partial Record with Motions.** If a party desires to move in the Supreme Court for dismissal, for release, for a stay pending appeal, for additional security on the bond on appeal or on a supersedeas bond, or for any intermediate order, the movant shall provide copies of all relevant Superior Court entries at the time the motion is filed, any relevant judgment, decision, or order of the Superior Court, and any accompanying memorandum or opinion, and any other part of the original record as the Supreme Court shall designate.

Rule 12. Docketing of the Appeal.

Upon filing of a notice of appeal, petition for writ, or other initiating document, the Clerk

of the Supreme Court thereupon shall enter the case upon the docket and shall so notify all parties to the lower court action.

Rule 13. Writs of Mandamus and Prohibition Directed to Judges or Non-Judges and Other Extraordinary Writs.

(a) **Mandamus or Prohibition to a Judge or Non-Judges; Petition for Writ; Service and Filing.** Application for a writ of mandamus or of prohibition directed to a judge or judges of the Superior Court shall be made by filing a petition therefor with the Clerk of the Supreme Court with proof of service on the respondent judge, on all parties to the action in the Superior Court, and on the Clerk of the Superior Court. Upon receipt of a copy of the petition, the Clerk of the Superior Court shall forthwith transmit to the Clerk of the Supreme Court a list of docket entries and inform the Supreme Court of any subsequently-entered orders. If directed to a non-judge, the petition need only be served on the non-judge. The petition shall be titled "In re [name of petitioner]." The petition shall contain a statement of the facts necessary to understand the issues presented by the application; a statement of the issues presented and of the relief sought; a statement of the reasons why the writ should issue; copies of any order or opinion or parts of the record which may be essential to understand the matters set forth in the petition; and shall include an address where notices and papers may be mailed or served upon counsel or, if proceeding *pro se*, the petitioner. Upon receipt of the prescribed docket fee, the Clerk of the Supreme Court shall docket the petition and submit it to the Chief Justice for assignment and disposition by the Supreme Court.

(b) **Denial; Order Directing Answer.** If the panel of the Supreme Court is of the opinion that the writ should not be granted, it shall deny the petition. Otherwise, it shall order that an answer to the petition be filed by the respondents within the time fixed by the order. The order shall be served by the Clerk of the Supreme Court on the judge named respondent and on all other parties to the action in the Superior Court. All parties below (other than petitioner) shall be deemed respondents for all purposes, with the judge being denominated as nominal respondent. If the judge named as nominal respondent does not desire to appear in the proceeding, the judge may so advise the Clerk of the Supreme Court and all parties by letter, but the petition shall not thereby be taken as admitted. The Clerk shall advise the parties of the dates on which briefs, if required, are to be filed and of the date, if any, of oral argument. The proceeding shall be given preference over ordinary civil cases.

(c) **Other Extraordinary Writs.** Application for extraordinary writs other than those provided for in subdivisions (a) and (b) of this Rule 13 shall be made by petition filed with the Clerk of the Supreme Court with proof of service on the parties named as respondents. Proceedings on such application shall conform, so far as is practicable, to the procedure prescribed in subdivisions (a) and (b) of this Rule.

(d) **Number of Copies.** Pursuant to Rule 40.3(h), no paper copies of electronically filed petitions need be filed with the Court. If a party is exempt from electronic filing, or if electronic filing has been disallowed, seven paper copies of petitions filed pursuant to paragraph (a) or (c) of this Rule and any answer, if ordered, shall be filed. The Court by order may direct that additional copies be furnished.

Rule 14. Habeas Corpus Proceedings.

(a) **Application for the Original Writ.** All applications for a writ of habeas corpus pursuant to 4 V.I.C. § 31(b)(2) must be accompanied with a statement explaining why the application has not and cannot be made to the Superior Court in the first instance. If the petitioner fails to include such a statement, or if the reasons given in the statement are insufficient to establish that relief cannot be obtained from the Superior Court or other appropriate forum, the Chief Justice or the panel may dismiss the petition without prejudice to its re-filing in the Superior Court. If the panel determines that the petitioner has met his burden of establishing that exceptional circumstances warrant this Court entertaining an application for writ of habeas corpus in the first instance, proceedings on such application shall conform, as far as is practicable, to the procedure prescribed in subdivisions (a) and (b) of Rule 13.

(b) **Appeals as of Right from Superior Court.** Notwithstanding the provisions of subdivision (a) of this Rule, a final order of the Superior Court denying an application for writ of habeas corpus brought pursuant to chapter 91 of title 5 of the Virgin Islands Code may be appealed to the Supreme Court as of right pursuant to 4 V.I.C. § 32(a) and Supreme Court Rule 5(a).

Rule 15. Format for Papers, Motions, and Briefs; Filing and Service.

(a) **Format, Caption, and Footnotes.** The use of both sides of a sheet of paper is encouraged. All printed matter must appear in at least twelve point type on opaque, unglazed paper. All papers and motions shall be firmly bound at the left margin in a secure manner that does not obscure the text, and that permits the document to lie reasonably flat when open. All staples or fasteners shall be covered, and must have smooth edges. Use of backbones or spines without stapling or fastening is prohibited. All papers and motions shall have margins on both sides of each page that are no less than one inch wide, and margins on the top and bottom of each page that are no less than three-quarters of an inch wide. All papers and motions shall consist of pages not exceeding eight and one half by eleven inches in size, with double spacing between each line of text. Copies may be used for filing and service if they are legible, except that an original signature shall be required by the movant on at least one copy of each document.

A motion or other paper addressed to the Supreme Court, the title of the case, the docket number, reference to the Superior Court docket number and the judicial division of St. Thomas/St. John or St. Croix, and a descriptive title indicating the purpose of the paper. The covers of all papers and motions shall contain the name(s), address(es), phone number(s), and facsimile number(s) of counsel for the party or parties on whose behalf the paper is submitted, or, if the party is proceeding *pro se*, the name, address, phone number(s), and facsimile number(s) of the party; and the names of counsel for opposing parties.

The cover of the brief of the appellant shall be blue; that of the appellee, red; that of an intervenor or amicus curiae, green; and that of any reply brief, gray. The cover of the appendix should be white. Where a transparent cover is utilized, the underlying cover sheet of the brief or appendix must nevertheless conform to the color requirements. The front covers of the briefs and appendices shall contain: (1) the number of the case; (2) the title of the case (*see* Rule 5(e)); (3) the judicial division and docket number of the Superior Court action below; (4) the title of the document (e.g., Brief for Appellant, Appendix); and (5) the names, addresses, phone number(s), and facsimile number(s) of counsel representing the party on whose behalf the document is filed.

The briefs and appendices shall conform to Rules 22-25.

All appendices shall be separate from the briefs and no attachments shall be appended to the briefs. All documents included must be clearly legible. Copies of the reporter's transcript and other papers may be inserted in the appendix. All pages of the appendix shall be clearly and sequentially numbered.

Excessive footnotes in briefs and motions are discouraged. Footnotes shall be printed in no less than ten point type.

(b) **Filing.** Papers required or permitted to be filed in the Supreme Court shall be conventionally or electronically_filed with the Clerk of the Supreme Court in accordance with Rule 15(f) and 40.3, but filing shall not be timely unless the papers are received by the Clerk within the time fixed for filing. It is the responsibility of the attorney or *pro se* party to correctly file all documents, including orders, TPOs, bond receipts, and notices of appearance. It is further the responsibility of the attorney or *pro se* party to bring all errors to the notice of the Supreme Court. Failure to file any accompanying documents that are required pursuant to any of these Rules may result in the filing being rejected before or after docketing, and/or may result in the issuance of sanctions against the party or against the attorney without further warning.

When a brief or motion includes a citation from another jurisdiction that is not available in the Supreme Court library, a copy of the case cited must be attached. All citations shall be according to the Uniform System of Citation. If a decision of the Supreme Court of the Virgin Islands is cited, the citation must indicate that it is a Supreme Court case. Failure to adequately cite may result in rejection of argument.

In accordance with ethical standards, any attorney who (1) appears to mislead the Court by providing law from another jurisdiction when this jurisdiction's law gives contrary analysis, or (2) does not present otherwise controlling contrary law, will be subject to such sanctions as the Court deems appropriate.

(c) **Required Redactions.** Parties, attorneys, or other persons filing any document, whether electronically or in paper, must refrain from including, or must partially redact where inclusion is necessary, the following personal data identifiers from all documents filed with the Supreme Court, including exhibits thereto, whether filed electronically or in paper, unless otherwise ordered by the Supreme Court:

(1) Social Security numbers. If an individual's Social Security number must be included, only the last four digits of that number should be used.

(2) Names of minor children and victims of sexual assault crimes. If the involvement of a minor child or a victim of a sexual assault crime must be mentioned, only the initials of that child or victim should be used.

(3) Dates of birth. If an individual's date of birth must be included, only the year should be used.

(4) Financial account numbers. If financial account numbers are relevant, only the last four digits of these numbers should be used.

(5) Home addresses. In criminal cases, if a home address must be included, only the city or island and the state or territory should be listed.

A party wishing to file a document containing the personal data identifiers listed above may:

(1) File an un-redacted version of the document under seal; or

(2) File a reference list under seal. The reference list must contain the complete personal data identifier(s) and the redacted identifier(s) used in their place in the

filing. All references in the case to the redacted identifiers included in the reference list will be construed to refer to the corresponding complete personal data identifier. The reference list must be filed under seal, and may be amended as of right.

The un-redacted version of the document or the reference list must be retained by the Supreme Court as part of the record. The Supreme Court may, however, still require the party to file a redacted copy for the public file.

The responsibility for redacting these personal identifiers rests solely with the party, attorney, or other person filing the document. Although the Clerk of the Supreme Court will typically not review each pleading for compliance with this requirement, filed documents which do not conform to these requirements may be rejected by the Clerk of the Supreme Court before or after docketing in accordance with Supreme Court Rule 20, and parties, attorneys, or other persons who fail to fully comply with this requirement may be sanctioned in accordance with the Supreme Court's Rules.

(d) **Service of Documents by Electronic Means**. The Notice of Electronic Filing that is generated by the Clerk of the Supreme Court through the VISCEFS constitutes service of the filed document on all Filing Users who are parties or attorneys to the appeal or original proceeding. Parties and attorneys who are not Filing Users must be conventionally served by the e-filer with a copy of any document filed electronically in accordance with Rule 40.2.

The certificate of service accompanying a document that has been e-filed must state either that the other party is, or is represented by, a Filing User and will be e-served by the Notice of Electronic Filing or that the other party will be conventionally served in accordance with Rule 40.7. If a party is to be conventionally served, the certificate of service must also indicate which method of conventional service authorized by Rule 40.7 will be used to effectuate service. The Notice of Electronic Filing generated by the VISCEFS system does not replace the certificate of service required by this Rule 15(d).

Notwithstanding this Rule 15(d), the Notice of Electronic Filing shall not constitute electronic service when a Filing User e-files a document in a sealed case. All documents e-filed in a sealed case shall be conventionally served in accordance with Rule 15(e) and must contain a certificate of service that complies with Rule 15(e).

(e) **Service of Documents by Conventional Means**. Conventional service of any document required or permitted to be conventionally served on a party may be accomplished by transmitting a copy of the document, at or before the time of filing, to the party's counsel or, if the party is proceeding pro se, on the party, by personal service, mail, or any other means that does not constitute e-service that should result in the individual served receiving the document no later than the next business day. When a party is personally served, service shall be complete upon receipt of the document. Service by mail or by commercial carrier is complete on mailing or delivery to the carrier. Service by facsimile is an acceptable method of conventional service of process on the parties, provided that the party to be served consents to service by facsimile. When time does not permit actual service on other parties, or the moving party has reason to believe that another party may not receive the motion in sufficient time to respond before the Supreme Court may act (as in certain emergency motions), the moving party should notify such other parties by telephone, e-mail, and/or facsimile of the filing of the motion.

If a document has been e-filed but served by conventional means on one or more parties, the certificate of service accompanying the document shall conform with Rule 15(d). If a document has been conventionally filed, the certificate of service shall contain an

acknowledgment of service by each party served or proof of service in the form of a statement of the date and manner of service and of the names of each party served, certified by the person who made service.

(f) **Conventional Filing of Documents.**

(1) *When Permitted***.** Conventional filing of any document required or permitted to be conventionally filed in the Supreme Court may be accomplished by hand-delivery when the Office of the Clerk of the Supreme Court is open or by mail addressed to the Clerk of the Supreme Court.

(2) *Conventional Filing by Inmates***.** A document conventionally filed by an inmate is timely if deposited in the institution's internal mailing system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this Rule. Timely filing may be shown by a notarized statement setting forth the date of deposit and stating that first-class postage has been prepaid.

(3) *Facsimile Filing Prohibited.* Documents may not be filed by facsimile without prior authorization by the Clerk of the Supreme Court or the Supreme Court. Authorization may be secured only in situations determined to be of an emergency nature or other compelling circumstance. In such cases, the original signed document must be conventionally or electronically filed promptly thereafter.

(g) **Signing Briefs, Motions, and Other Papers; Representations to the Court; Sanctions.**

(1) *Signature*. Every petition, brief, written motion, and other paper filed in the Supreme Court must be signed by at least one attorney of record in the attorney's name — or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address, and telephone number. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

(2) *Representations to the Court*. By presenting to the Supreme Court a pleading, brief, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(i) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(ii) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(iii) the factual contentions have evidentiary support; and

(iv) the denials of factual contentions are warranted on the evidence.

For purposes of this Rule 15(g), an electronic signature affixed to a pleading, brief, written motion, or other paper shall constitute signing of the document.

(3) *Sanctions*. If, after notice and a reasonable opportunity to respond, the Supreme Court determines that this Rule 15(g) has been violated, the Supreme Court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

Rule 16. Computation of Time.

(a) **Application of Rule 9 of the Rules Governing the Superior Court.** Computation of time for a matter being considered by the Superior Court while a case is on appeal are subject to computation of time according to SUPER. CT. R. 9.

(b) **Computation of Time.** For purposes of the Supreme Court, in computing any period of time prescribed or allowed by these Rules, by an order of the Court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the Clerk of the Supreme Court inaccessible, in which event the period runs until the next day which is not one of the aforementioned excluded days. As used in this Rule, "legal holiday" refers to the holidays specified in 1 V.I.C. § 171 and includes only January 1 (New Year's Day), January 6 (Three King's Day), Third Monday in January (Martin Luther King, Jr.'s Birthday), Third Monday in February (Presidents Day), March 31 (Transfer Day), Holy Thursday, Good Friday, Easter Monday, Last Monday in May (Memorial Day), July 3 (V.I. Emancipation Day), July 4 (Independence Day), First Monday in September (Labor Day), Second Monday in October (Columbus Day and Puerto Rico Friendship Day), November 1 (D. Hamilton Jackson Day), November 11 (Veterans Day), Fourth Thursday in November (Thanksgiving Day), December 25 (Christmas Day), December 26 (Christmas Second Day) and such other days as the President, or the Governor may by proclamation declare to be holidays.

(c) **Additional Time After Service by Mail.** Whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon that party and the paper is served by mail, three days shall be added to the prescribed period.

(d) **No Additional Time After Electronic Service**. When a party may or must act within a specified time after documents are served electronically through VISCEFS, no additional time shall be added to the prescribed period.

Rule 17. Extension of Time.

All temporal deadlines shall be strictly construed. Failure to adhere to deadlines may result in dismissal without further notice. Motions for extension of time (excluding notices of appeal) shall be submitted at least five working days before the deadline which is requested to be extended. All other parties must receive a copy of the motion at least three working days before such deadline, and if the party wishes to oppose the motion, such opposition shall be filed at least one working day before the original deadline.

Rule 18. Corporate Disclosure; Business Entity in an Appeal; Representation of a Corporation.

(a) **Required Disclosure for a Business Entity.** Any business entity involved in an appeal must include in its first paper filed with the Supreme Court the nature of its organization: sole proprietorship, corporation, partnership; its use of a trade name, if any; and its affiliation and or its links to other businesses through complete or partial commonality of ownership or financial interest.

(b) **Representation.** If a corporation is pursuing or defending an appeal, it must be represented by counsel duly admitted to practice law in the Supreme Court.

Rule 19. Notice of Possible Judicial Disqualification.

If the Chief Justice, or any Associated Justice or Designated Justice assigned to a panel of the Supreme Court, participated at any stage of the case in the Superior Court or in related proceedings, appellant, promptly after filing the notice of appeal, shall notify the Clerk of the Supreme Court in writing of the justice or designated justice and/or the related proceeding, and shall send a copy of such notice to appellee's counsel. Appellee has a corresponding responsibility to so notify the Clerk if, for any reason, appellant fails to comply with this Rule fully and accurately.

Rule 20. Non-Conforming Motions, Briefs, and Appendices.

All motions, briefs, and appendices must contain supporting documents, including relevant lower court pleadings, and must otherwise conform with the Rules of the Supreme Court. If the supporting documents are not so included, the document may be rejected by the Clerk of the Supreme Court before or after docketing.

Rule 21. Motions.

(a) **Content of Motions; Response.** Unless another form is elsewhere prescribed by these Rules, an application for an order or other relief shall be made by filing a motion for such order or relief with proof of service on all other parties. The motion shall contain or be accompanied by any matter required by a specific provision of these Rules governing such a motion, shall state with particularity the grounds on which it is based, and shall set forth the order or relief sought. If a motion is supported by briefs, affidavits, or other papers, they shall be served and filed with the motion. Any party may file a response in opposition to a motion within fourteen days after service of the motion. All motions shall be accompanied by a proposed order which includes a distribution list of all attorneys and *pro se* parties.

(b) **Motions for Procedural Orders.** Notwithstanding the provisions of this Rule regarding motions generally, motions for procedural orders, including any motion for extension of time, may be acted upon at any time by the Court, without awaiting a response thereto.

(c) **Power of a Single Justice.** In addition to the authority expressly conferred by these Rules or by law, the Chief Justice, or any other justice designated by the Chief Justice, may entertain and may grant or deny any non-dispositive motion or other pretrial matter including, but not limited to, briefing schedules, motions for extensions of time, and motions for substitution of counsel. The action of a single justice may be reviewed by the Court or the appellate panel.

(d) **Motions Decided by the Clerk.** Pursuant to a Rule or order of the Supreme Court, the Clerk may entertain and dispose of specified types of procedural motions which are ministerial in nature, relate to the preparation or printing of the appendix and briefs on appeal, or relate to calendar control. If application is promptly made by any party adversely affected by the action of the Clerk, such action may be reconsidered, vacated, or modified by the Chief Justice or by a panel.

(e) **Number of Copies.** Pursuant to Rule 40.3(h), no paper copies of electronically filed motions need be filed with the Court. If a party is exempt from electronic filing, or if electronic filing has been disallowed, three copies of all motions shall be filed with the original, but the Court may require that additional copies be furnished.

(f) **Oral Argument.** No oral argument will be permitted on any motion unless ordered by the Supreme Court.

(g) **Uncontested Motions.** Each uncontested motion shall be certified as uncontested by counsel. In the absence of a timely response, the Court may treat a motion without certification as uncontested.

Rule 22. Briefs.

(a) **Brief of the Appellant.** The brief of the appellant shall contain under appropriate headings and in the order here indicated:

(1) A table of contents, with page references, and a table of cases (alphabetically arranged), statutes, and other authorities cited, with references to the pages of the brief where they are cited.

(2) A statement of subject matter and appellate jurisdiction. The statement shall include:

(i) a statement of the basis for subject matter jurisdiction in the Superior Court, with citation to applicable statutory provisions and with reference to the relevant facts to establish such jurisdiction;

(ii) a statement of the basis for jurisdiction in the Supreme Court, with citation to applicable statutory provisions and with reference to the relevant facts to establish such jurisdiction. The statement shall include relevant filing dates establishing the timeliness of the appeal and

(a) shall state that the appeal is from a final order or a final judgment that disposes of all claims with respect to all parties or, if not,

(b) shall include information establishing that the Supreme Court has jurisdiction on some other basis.

(3) A statement of the issues presented for review. This shall include a designation by reference to specific pages of the appendix or place in the proceedings at which each issue on appeal was raised, objected to, and ruled upon; and a statement of the standard or scope of review for each issue on appeal (e.g., whether the trial court abused its discretion, whether its findings of fact are clearly erroneous, etc.). The statement shall also provide, by way of subdivision,

(i) a statement of whether this case or proceeding has been before the Supreme Court previously, and whether the party is aware of any other case or proceeding that is in any way related, completed, pending, or about to be presented before the Supreme Court or any other court, state or federal. If the party is aware of any previous or pending appeals before the Supreme Court arising out of the same case or proceeding, the statement should identify each such case; and

(ii) a copy of the order or orders being appealed and, if any, the relevant opinions of the Superior Court, which shall be inserted in the appendix.

(4) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of proceedings, and its disposition in the court below. There shall follow a statement of the facts relevant to the issues presented for review, with appropriate references to the record (*see* paragraph (d)of this Rule 22).

(5) An argument. The argument may be preceded by a summary. The argument shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes, and parts of the record relied on.

(6) A short conclusion stating the precise relief sought.

(b) **Brief of the Appellee.** The brief of the appellee shall conform to the requirements of paragraph (a)(1)–(6) of this Rule, except that a statement of jurisdiction, of the issues, or of the case need not be made unless the appellee is dissatisfied with the statement of the appellant.

(c) **Reply Brief.** The appellant may file a brief in reply to the brief of the appellee, and if the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross appeal. No further briefs may be filed except with leave of Court. All reply briefs shall contain a table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with references to the pages of the reply brief where they are cited.

(d) **References in Briefs to the Record.** All assertions of fact in briefs shall be supported by a specific reference to the record. All references to portions of the record contained in the appendix shall be supported by a citation to the pages of the appendix at which those parts appear, followed by a parenthetical description of the document to which they referred, unless otherwise apparent from context. Intelligible abbreviations may be used. If reference is made to evidence, the admissibility of which is in controversy, reference shall be made to the pages of the appendix or of the transcript at which the evidence was identified, offered, and received or rejected.

(e) **Reproduction of Statutes, Rules, and Regulations.** If determination of the issues presented requires the study of statutes, rules, regulations, etc., or relevant parts thereof, they shall be reproduced in the appendix, or they may be supplied to the Court in pamphlet form.

(f) **Length of Briefs.** Except by permission of the Court, principal briefs shall not exceed thirty pages, and reply briefs shall not exceed fifteen pages, exclusive of pages containing the table of contents and the table of authorities.

(g) **Briefs in Cases Involving Cross Appeals.** If a cross appeal is filed, the party who first files a notice of appeal, or in the event that the notices are filed on the same day, the plaintiff in the proceeding below, shall be deemed the appellant for the purposes of these Rules, unless the parties otherwise agree or the Court otherwise orders. The brief of the appellee shall conform to the requirements of paragraphs (a)(1)–(6) and (f) of this Rule 22 with respect to the appellee's cross appeal as well as response to the brief of the appellant, except that a statement of the case need not be made unless the appellee is dissatisfied with the statement of the appellant.

(h) **Briefs in Cases Involving Multiple Appellants or Appellees.** In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

(i) **Citations.** In the argument section of the brief, citations should be made to the United States Supreme Court; the United States Court of Appeals for the Third Circuit; the Supreme Court of the Virgin Islands; the Superior Court of the Virgin Islands; the District Court of the

Virgin Islands; other United States courts of appeals; and/or any other court, in that order of precedence. For each legal proposition supported by citation in the argument, counsel shall cite and distinguish any opposing authority within the jurisdiction. Counsel shall make parallel citations to the V.I. Reports where Third Circuit Court of Appeals, District Court, Supreme Court, and Superior Court decisions are reported. Citations to federal opinions that have been reported shall be to the United States Reports, the Federal Reporter, the Federal Supplement, or the Federal Rules Decisions, and shall identify the judicial circuit or district and year of decision. Citations to the United States Supreme Court opinions that have not yet appeared in the official reports may be to the Supreme Court Reporter, the Lawyer's Edition, or United States Law Week in that order of preference.

Citations to United States Law Week shall include the month, day, and year of the decision. Citations to federal decisions that have not been formally reported shall identify the court, docket number, and date, or refer to the electronically transmitted decision. Citations to services and topical reports, whether permanent or looseleaf, and to electronic citation systems, shall not be used if the text of the case cited has been reported in the United States Reports, the Federal Reporter, the Federal Supplement, the Federal Rules Decisions or the Virgin Islands Reports. Citations to state court decisions should include the West Reporter system whenever possible, with an identification of the state court. Any decision cited by counsel that is not retrievable in hard copy form in the Supreme Court of the Virgin Islands library must be provided as a part of the appendix.

When pertinent and significant authorities come to the attention of a party after the party's brief has been filed, or after oral argument but before decision, a party shall promptly advise the Clerk of the Supreme Court, by letter, with a copy to all counsel, setting forth the citations. There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain, but the letter shall state the reasons for the supplemental citations without argument. A response, if any, shall be made promptly and shall be similarly limited.

Any failure to follow this format may result in sanctions without further notice.

(j) **Appellee's Brief in Consolidated Appeals.** The brief of an appellee who has been permitted to file one brief in consolidated appeals shall contain an appropriate cross reference index which clearly identifies and relates appellee's answering contentions to the specific contentions of the various appellants. The index shall contain an appropriate reference by appellee to the question raised and the page in the brief of each appellant.

(k) **Footnotes.** Excessive footnotes in briefs are discouraged. Footnotes shall be printed in no less than ten point type.

(l) **Certificate.** Each party shall include a certification in its initial brief filed with the Supreme Court that at least one of the attorneys whose names appear on the brief is a member of the bar of the Supreme Court. Attorneys regularly admitted to the Virgin Islands bar under Supreme Court Rules 201-204 or any predecessor rules, are members of the bar of the Supreme Court.

(m) **Waiver of Issues.** Issues that were (1) not raised or objected to before the Superior Court, (2) raised or objected to but not briefed, or (3) are only averted to in a perfunctory manner or unsupported by argument and citation to legal authority, are deemed waived for purposes of appeal, except that the Supreme Court, at its option, may notice an error not presented that affects substantial rights.

(n) **Constitutionality of Statute.** It shall be the duty of a party who draws in question the constitutionality of any Virgin Islands statute in any proceeding in the Supreme Court to

which the Government of the Virgin Islands, or any agency thereof, or any officer or employee thereof, as such officer or employee, is not a party, upon the filing of the record, or as soon thereafter as the question is raised in the Supreme Court, to give immediate notice in writing to the Attorney General of the Virgin Islands of the existence of said question.

Rule 23. Brief of *Amicus Curiae*.

A brief of *amicus curiae* may be filed only if accompanied by written consent of all parties or by leave of the Supreme Court. The brief may be filed conditionally with the motion for leave to file it, which shall identify the interest of the movant and shall state the reasons why a brief of *amicus curiae* is desirable. Any *amicus curiae* shall file its brief within the time allowed the party whose position the amicus will support, unless the Supreme Court for cause shown grants leave for later filing, in which event it shall specify within what period an opposing party may answer. A motion of *amicus curiae* to participate in the oral argument will be granted only for extraordinary reasons.

Rule 24. Appendix to the Briefs.

(a) **Duty of Appellant to Prepare and File; Content of Appendix; Time for Filing; Number of Copies.** Appellant shall prepare and file an appendix to the briefs which shall contain all materials designated by all parties and shall include: a table of contents with page references and a copy of the notice of appeal; the judgment, order, or decision being appealed; a certified list of docket entries from the Superior Court; and relevant portions of a trial transcript, exhibit, or other parts of the record referred to in the briefs at such length as may be necessary to preserve context. Except where they have independent relevance, memoranda of law filed in the Superior Court should not be included in the appendix. Matters that were sealed at the Superior Court level shall so indicate on the cover of the appendix. In an appeal challenging a criminal sentence, the appellant shall attach five copies of the presentence investigation report in an appropriately labeled sealed envelope.

Whenever an appeal challenges the sufficiency of the evidence to support a verdict or other determination (including an argument that a finding is clearly erroneous), the appendix shall reprint all the evidence of record which supports the challenged determination. The fact that parts of the record are not included in the appendix shall not prevent the parties or the Supreme Court from relying on such parts. The appendix is a separate, freestanding document.

Appellant shall file the appendix with the Clerk of the Supreme Court at the time appellant's briefs are filed. If either party files a separate appendix, that party shall file it with the Clerk of the Supreme Court at the time its briefs are filed and serve one copy of the separate appendix on counsel for each party separately represented. If a party is required to e-file, the appendix shall be e-filed with the Clerk of the Supreme Court, served in accordance with Rule 15(d), and four paper copies filed in accordance with Rule 40.3(h). If a party is exempt from e-filing, or if e-filing has been disallowed in a particular case, it shall conventionally file seven copies of the appendix (or, if authorized, a separate appendix) along with seven copies of its brief, and at the same time shall conventionally serve one copy of the appendix on counsel for each party separately represented, unless the Supreme Court directs the filing or service of a lesser number, which shall be allowed only in extraordinary cases

(b) **Determination of Contents of Appendix; Cost of Producing.** The parties are

required to consult and agree on the contents of the appendix. It is the duty of the parties in the first instance to cooperate in filing one joint appendix on appeal. The Supreme Court may permit, upon timely motion, the filing of separate appendices upon certification, with supporting documents, that a given party is not cooperating.

The following procedure is recommended to accomplish the goal of filing the joint appendix: Within fourteen days of when the transcript is prepared or the certification is filed, appellant should serve on the appellee a designation of the parts of the record which the appellant intends to include in the appendix and a statement of the issues which the appellant intends to present for review. Within fourteen days after receipt of the designation, the appellee shall serve upon the appellant a designation of those additional parts of the record that it deems necessary to present to the Supreme Court. The appellant shall include in the appendix the parts thus designated with respect to the appeal and any cross appeal. The parties shall not engage in unnecessary designation. The provisions of this paragraph shall apply to cross appellants and cross appellees. Sanctions may result from a failure to cooperate in the filing of a joint appendix.

Unless the parties otherwise agree, the cost of producing the appendix shall initially be paid by the appellant, but if the appellant considers that parts of the record designated by the appellee for inclusion are unnecessary for the determination of the issues presented, the appellant may so advise the appellee and the appellee shall advance the cost of including such parts. The cost of producing the appendix shall be taxed as costs in the case.

(c) **Arrangement of the Appendix.** The beginning of the appendix shall include a table of contents. The relevant docket entries shall be set out following the table of contents. Thereafter, other parts of the record shall be set out, including exhibits and any relevant transcript entries, preferably in chronological order. The pages of the appendix shall be clearly and sequentially numbered; the page numbers within the original transcript may also appear on the page.

(d) **Sanctions Pursuant to Determination of Contents of Appendix.** The Court, *sua sponte* by rule to show cause or on the motion of any party, may impose sanctions in the form of denial of all or some of the costs of the appeal upon finding that any party has unreasonably and vexatiously caused the inclusion of materials in an appendix that are unnecessary for the determination of the issues presented on appeal.

A party filing such a motion shall do so within fourteen days after a bill of costs has been served. The movant shall submit with the motion an itemized statement specifically setting forth, by name and appendix page number, the item or items that the movant asserts were unnecessarily included in the appendix. Any party against whom sanctions are requested may file an answer to the motion or rule to show cause. The answer shall be filed within fourteen days after service of the motion or rule to show cause.

Rule 25. Filing and Service of Briefs.

(a) **Time for Serving and Filing Briefs.** Appellant shall serve and file a brief within forty days after the date on which the record is complete and the briefing schedule is issued whichever occurs earlier. The appellee shall serve and file a brief within thirty days after service of the brief of the appellant. The appellant may serve and file a reply brief within fourteen days after service of the brief of the appellee. The Supreme Court by order may modify the periods prescribed above for serving and filing briefs for specific cases.

(b) **Number of Copies to Be Filed and Served.** If a party is required to e-file, briefs

shall be e-filed with the Clerk of the Supreme Court, served in accordance with Rule 15(d), and seven paper copies filed in accordance with Rule 40.3(h). If a party is not required to e-file, seven copies of each brief shall be conventionally filed with the Supreme Court, and two copies shall be conventionally served on counsel for each party separately represented.

(c) **Consequence of Failure to File Briefs.** If an appellant fails to file a brief within the time provided by this Rule, or within the time as extended, an appellee may move for dismissal of the appeal.

If an appellee fails to file a brief within the time provided by this Rule, or within the time as extended, the appellee will not be heard at oral argument except by permission of the Supreme Court.

Rule 26. Prehearing Conference.

The Supreme Court may direct the attorneys for the parties to appear before a Justice, or other designated person for a prehearing conference to consider the simplification of the issues and such other matters as may aid in the disposition of the proceeding by the Supreme Court.

Rule 27. Oral Argument.

(a) **In General.** Oral argument will normally be allowed in all cases unless the Supreme Court determines after examination of the briefs and record that oral argument is not needed.

Oral argument will seldom be permitted in matters in which one of the parties appears *pro se*. In certain appeals, the Clerk of the Supreme Court will inform the parties of the issues that the panel wishes the parties to address.

In determining the need for oral argument, the Supreme Court will consider whether:

(1) the appeal is frivolous; or

(2) the dispositive issue or set of issues has been recently authoritatively decided; or

(3) the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.

(b) **Notice of Argument; Postponement.** The Clerk of the Supreme Court shall advise all parties whether oral argument is to be heard, and if so, of the time and place therefor, and the time to be allowed each side. Postponement will be permitted rarely, and only in extraordinary circumstances.

(c) **Order and Content of Argument.** The appellant is entitled to open and conclude the argument if time is reserved for rebuttal. The opening argument shall include a fair statement of the case. Counsel will not read at length from briefs, records, or authorities.

(d) **Cross and Separate Appeals.** A cross or separate appeal shall be argued with the initial appeal as a single argument, unless the Supreme Court otherwise directs. If a case involves a cross appeal, the party who first files a notice of appeal, or in the event that the notices are filed on the same day, the plaintiff in the proceeding below shall be deemed the appellant for the purpose of this Rule, unless the parties otherwise agree or the Court otherwise directs. If separate appellants support the same argument, care shall be taken to avoid duplication of argument.

(e) **Non-Appearance of Parties.** If any of the parties fail to appear to present argument, the panel will hear argument on behalf of the remaining parties, and sanctions shall be considered against the absent party.

(f) **Use of Physical Exhibits at Argument; Removal.** If physical exhibits other than documents are to be used at the argument, counsel shall notify the Clerk of the Supreme Court no later than seven days before the date of argument so that the appropriate arrangements may be made, and counsel shall arrange to have them placed in the courtroom before the Supreme Court convenes on the date of the argument. After the argument, counsel shall cause the exhibits to be removed from the courtroom unless the Supreme Court otherwise directs. Failure to remove the exhibits shall result in their immediate disposal.

(g) **Recording of Oral Argument.** The Supreme Court may, at its discretion, record the video and audio of an oral argument for live or archived viewing by the public. In all instances in which oral argument is recorded, counsel and unrepresented parties must speak clearly into the microphone and not wander from the microphone or the podium so that audio and video can be captured.

Rule 28. Entry of Judgment.

The notation of a judgment in the docket constitutes entry of the judgment. The Clerk of the Supreme Court or a designee shall attest and enter the judgment following receipt of the judgment order or order with accompanying memorandum opinion of the Supreme Court. The Clerk shall distribute to all parties a copy of the opinion and order, if any, or of the judgment order if no opinion was written, and give notice of the date of entry of the judgment.

All written opinions of the Supreme Court shall be filed with and preserved by the Clerk. All opinions shall be printed under the supervision of the Clerk. All persons other than the parties desiring a (certified) copy of a printed opinion of the Supreme Court may receive one from the Clerk of the Supreme Court at a fee as may be set by the Supreme Court from time to time.

Rule 29. Interest on Judgments.

Unless otherwise provided by law, if a judgment for money in a civil case is affirmed, whatever interest is allowed by law shall be payable from the date the judgment was entered in the Superior Court. If a judgment is modified or reversed with a direction that a judgment for money be entered in the Superior Court, the allowance of interest shall be determined by the Superior Court upon resolution of the matter.

Rule 30. Costs; Damages for Delay.

(a) **To Whom Allowed.** Except in criminal cases or as otherwise provided by law, if an appeal or petition is dismissed, reasonable costs, which may include attorney's fees, shall be taxed against the appellant unless otherwise agreed by the parties or ordered by the Supreme Court; if a judgment is affirmed or a petition denied, reasonable costs shall be taxed against the appellant or petitioner unless otherwise ordered; if a judgment is reversed or a petition granted, reasonable costs shall be taxed against the appellee or the respondent unless otherwise ordered; if a judgment is affirmed or reversed in part, or is vacated, or a petition granted in part and denied in part, reasonable costs shall be allowed only as ordered by the Supreme Court. If the side against whom costs are assessed has multiple parties, the Supreme Court may apportion the assessment or impose it jointly and severally. In cases involving the Government of the Virgin

Islands or an agency or officer thereof, reasonable costs shall only be awarded as authorized by law. The Supreme Court shall, in its discretion, determine whether costs are reasonable.

If the Supreme Court determines that an appeal or petition_is frivolous, it may, after a separately filed motion or notice from the Court and reasonable opportunity to respond, award just damages and single or double costs to the appellee or the respondent.

(b) **Bill of Costs; Objections; Costs to Be Inserted in Mandate or Added Later.** A party who desires such costs to be taxed shall state them in an itemized and verified bill of costs, including attorney's fees, which the party shall file with the Clerk of the Supreme Court, with proof of service, within fourteen days after the entry of judgment. The Supreme Court shall deny untimely bills of costs unless a motion showing extraordinary circumstances is filed with the bill. Objections to the bill of costs must be filed within fourteen days of service on the party against whom costs are to be taxed unless the time is extended by the Supreme Court. An answer to objections to a bill of costs may be filed within fourteen days of service of the objections. Issuance of the mandate shall not be delayed for taxation of costs, but if the mandate has been issued before final determination of costs, the statement, or any amendment thereof, shall be added to the mandate upon request by the Clerk of the Supreme Court to the Clerk of the Superior Court. However, if a party seeks attorney's fees as among the costs to be taxed, the amount of attorney's fees to be awarded—if any—shall be determined by the Superior Court on remand.

Rule 31. Petition for Rehearing.

(a) **Time for Filing; Content; Answer; Action By Court If Granted.** A petition for rehearing may be filed within fourteen days after entry of judgment. The petition shall state with particularity the points of law or fact which, in the opinion of the petitioner, the Supreme Court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present. Oral argument in support of the petition will not be permitted. No answer to a petition for rehearing will be received unless requested by the Supreme Court, but a petition for rehearing will ordinarily not be granted in the absence of such a request. If a petition for rehearing is granted, the Supreme Court may make a final disposition of the cause without reargument or may restore it to the calendar for reargument or resubmission or may make such other orders as are deemed appropriate under the circumstances of the particular case.

(b) **Form of Petition; Number of Copies.** The petition shall not exceed fifteen pages in length, double-spaced, and pursuant to Rule 40.3(h), no paper copies of electronically filed petitions need be filed with the Court. If a party is exempt from electronic filing, or if electronic filing has been disallowed, seven copies shall be filed with the Supreme Court. All remaining parties shall be served in accordance with these Rules.

Rule 32. Issuance of Mandate; Stay of Mandate; Appeal.

(a) **Issuance of Mandate**. The mandate of the Supreme Court shall issue twenty-one days after the entry of judgment unless the time is shortened or enlarged by order. A certified copy of the judgment and a copy of the opinion of the Supreme Court, if any, and any direction on costs shall constitute the mandate, unless the Court directs that a formal mandate issue. The timely filing of a petition for rehearing will stay the mandate until disposition of the petition unless otherwise ordered by the Supreme Court. If the petition is denied, the mandate shall issue ten

days after entry of the order denying the petition unless otherwise ordered. The filing of a notice of appeal or application for a writ of certiorari to the United States Court of Appeals for the Third Circuit will not stay the mandate.

(b) **Stay of Mandate**. A party who files a motion requesting a stay of the mandate pending appeal or application for writ of certiorari to the United States Court of Appeals for the Third Circuit pursuant to Section 23 of the Revised Organic Act, or the Supreme Court of the United States, must file, at the same time, proof of service on all other parties. The motion must show that an appeal would present a substantial question and that there is good cause for a stay. If granted, the Clerk of the Supreme Court shall so notify the Clerk of the Superior Court. The Supreme Court may require a bond or other security as a condition to the grant of a stay of the mandate.

(c) **Appeal.** Any appeal or petition for writ of certiorari from a judgment or order of the Supreme Court to the United States Court of Appeals for the Third Circuit or the Supreme Court of the United States shall be made in accordance with rules promulgated by the Third Circuit Court of Appeals or the United States Supreme Court, as the case may be.

Rule 33. Voluntary Dismissal.

If the parties to a docketed appeal or other proceeding sign and file a stipulation for dismissal, specifying the terms as to payment of costs, and pay whatever fees are due, the case shall be dismissed upon approval by the Supreme Court, but no mandate or other process shall issue without an order of the court. Upon motion and notice, the Supreme Court may dismiss the appeal upon terms fixed by the Supreme Court; provided, however, that such a dismissal shall not relieve the appellant or petitioner of the duty to pay the docketing fee or receive permission to proceed *in forma pauperis*.

Rule 34. Substitution of Parties.

(a) **Death of a Party.** If a party dies after a notice of appeal is filed or while a proceeding is otherwise pending in the Supreme Court, the personal representative of the deceased party may be substituted as a party on motion filed by the representative, or by any party, with the Clerk of the Supreme Court. If the deceased party has no representative, any party may suggest the death on the record and proceedings shall then be had as the Supreme Court may direct. If an appellee dies after entry of judgment or order in the Superior Court but before a notice of appeal is filed, an appellant may proceed as if death had not occurred. After the notice of appeal is filed, substitution shall be effected in the Supreme Court in accordance with this paragraph. If a party entitled to appeal shall die before filing a notice of appeal, the notice of appeal may be filed by the personal representative, or, if there is no personal representative, by the attorney of record within the time prescribed by these Rules. After the notice of appeal is filed, substitution shall be effected in the Supreme Court in accordance with this paragraph.

(b) **Substitution for Other Causes.** If substitution of a party in the Supreme Court is necessary for any reason other than death, substitution shall be effected in accordance with the procedure prescribed in paragraph (a) of this Rule 34, and by order of the Supreme Court.

(c) **Public Officers; Death or Separation from Office.**

(1) When a public officer who is a party to an appeal or other proceeding in the Supreme Court in his or her official capacity and during its pendency dies,

resigns, or otherwise ceases to hold office, the action does not abate and his or her successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) When a public officer is a party to an appeal or other proceeding in his or her official capacity, he or she may be described as a party by his or her official title rather than by name; but the Supreme Court may require his or her name to be added.

Rule 35. Duties of the Clerk.

(a) **Days of Operation.** The office of the Clerk of the Supreme Court shall be open to receive filings during business hours on all days except Saturdays, Sundays, and legal holidays. Legal holidays when the office shall be closed are defined in Rule 16(b), but the Chief Justice may provide that the office of the Clerk of the Supreme Court shall be open for specified hours on Saturdays, Sundays, or legal holidays.

(b) **The Docket; Calendar; Other Records Required.** The Clerk of the Supreme Court shall maintain the docket which shall contain an index of cases, in such form and style as may be prescribed by the Supreme Court, and shall enter therein each case. Cases shall be assigned consecutive file numbers. The file number of each case shall be noted on the docket. All papers filed with the Clerk of the Supreme Court and all process, orders, and judgments shall be entered chronologically in the docket. Entries shall be brief but shall show the nature of each paper filed or judgment or order entered. The entry of an order or judgment shall show the date the entry is made. The Clerk of the Supreme Court shall enter a record of all papers filed, all actions taken, all process, orders, and judgments, and shall keep such other books and records as may be required by the Supreme Court.

(c) **Notice of Orders or Judgments.** Immediately upon the entry of an order or judgment, the Clerk of the Supreme Court shall electronically or conventionally serve, in accordance with Rule 40, a notice of entry ~~by mail~~ upon each party to the proceeding together with a copy of any opinion respecting the order or judgment, and shall make a note in the docket of the service. Service on a party represented by counsel shall be made on counsel.

(d) **Custody of Records and Papers.** The Clerk of the Supreme Court shall have custody of the records and papers of the Supreme Court, and shall not permit any original record or paper to be taken from the Clerk's custody except as authorized by the orders or instructions of the Supreme Court. Original papers transmitted as the record on appeal or review shall, upon disposition of the case, be returned to the Superior Court. The Clerk of the Supreme Court shall preserve the electronic record and, until the case is complete and closed, at least one copy of briefs and appendices and other printed papers filed.

(e) **Dismissal for Failure to Prosecute.** When an appellant fails to comply with the Rules of the Supreme Court, the Clerk of the Supreme Court shall issue written notice to counsel or to the appellant who appears *pro se* that upon the expiration of fourteen days from the date of the notice, the appeal may be dismissed for want of prosecution unless appellant remedies the deficiency within that time. If the deficiency is not remedied within this period, the Clerk or a justice is authorized to dismiss the appeal for want of prosecution and issue a certified copy

thereof to the Clerk of the Superior Court as the mandate. The appellant shall not be entitled to remedy the deficiency after the appeal is dismissed except by order of the Court. A motion to set aside such an order must be justified by the showing of good cause and may not be filed after fourteen days of the date of dismissal.

Notwithstanding the preceding paragraph, if an appellant fails to comply with the Supreme Court Rules of Appellate Procedure with respect to the timely filing of a brief and appendix, at any time after the seventh day following the due date, the Clerk of the Supreme Court or a justice_is authorized to dismiss the appeal for want of timely prosecution. The procedure to be followed in requesting an order to set aside dismissal of the appeal is the same as that set forth in the preceding paragraph.

Rule 36. Admission of Attorneys; Entry of Appearance; Conduct.

(a) **Admission to the Bar of the Supreme Court.** All persons admitted to the Virgin Islands Bar pursuant to Supreme Court Rules 201, 202, and 204 or any predecessor rule may appear before the Supreme Court and are subject to all conditions of practice as recognized in the Supreme Court.

(b) **Entry Of Appearance.** Counsel for all parties or *pro se* parties entitled to participate in a proceeding in the Supreme Court and desiring to do so shall file written appearances which shall include an address where notices and papers may be mailed or served upon him or her. A notice of appeal which satisfies the content requirements of Rule 4(c) shall serve as the written appearance for counsel or the *pro se* party who initiated the proceeding.

(c) **Conduct of Counsel.** The Supreme Court expects counsel to conduct themselves professionally and with civility at all times, which includes written and oral communications among counsel and with the Court. Violation of this Rule may lead to sanctions.

(d) **Withdrawal, Substitution, or Discharge of Counsel.**

(1) An attorney desiring to withdraw as counsel of record must file a motion requesting leave therefor. The motion must show that prior notice of the motion was given by service upon the attorney's client. The Supreme Court may, in its discretion, grant or deny such motion or, where appropriate, remand the case for filing of a motion to withdraw.

(2) A substitution of counsel may be made by filing a notice of withdrawal and substitution. The notice must provide withdrawing counsel's name and substituting counsel's name, physical and electronic mail addresses to be used for service, and telephone number. A notice of withdrawal and substitution of counsel must be signed by the client consenting thereto.

(3) A client desiring to discharge the client's counsel of record must file a motion requesting leave therefor. The motion must show service upon the attorney. The Supreme Court may, in its discretion, grant or deny such motion or, where appropriate, remand the case for the filing of a motion to withdraw.

(4) All motions for withdrawal, substitution, or discharge of counsel in criminal or other cases in which counsel was appointed by the Supreme Court or the Superior Court must comply with Supreme Court Rule 210.3. Notwithstanding this Rule 36(d), motions to withdraw as counsel pursuant to *Anders v. California* are not permitted.

Rule 37. Rules.

The Supreme Court, by order of the Chief Justice or Promulgation Order of the Court,

may from time to time make and amend Rules governing its practice after giving appropriate public notice and an opportunity for comment from the local Bench, the public, and the local bar.

Rule 38. Certification of Questions of Law.

(a) **Generally.** The Supreme Court of the Virgin Islands may answer questions of law certified to it by a court of the United States or the court of last resort of a state, the District of Columbia, or a territory of the United States, if there is involved in any proceeding before the certifying court a question of law which may be determinative of the cause then pending in the certifying court and concerning which it appears there is no controlling precedent in the decisions of the supreme court.

(b) **Method of Invoking.** A request for certification under this rule may be invoked upon the motion of the court or of any party to the cause.

(c) **Right to Reformulate.** The Supreme Court of the Virgin Islands may reformulate a question of law certified to it.

(d) **Contents of Certification Order.** A certification order shall set forth:

(1) The questions of law to be answered;

(2) A statement of all facts relevant to the questions certified;

(3) The nature of the controversy in which the questions arose; and

(4) A designation of the party or parties who will be the appellant(s), i.e. the party holding the affirmative, in the appellate court.

(e) **Preparation of Certification Order.**

(1) The certification order shall be prepared by the certifying court, signed by the judge presiding at the hearing and forwarded to the Supreme Court by the clerk of the certifying court under the official seal of the court. The Supreme Court may require the original or copies of all, or of any portion, of the record before the certifying court, to be filed under the certification order, if, in the opinion of the Supreme Court, the record or any portion may be necessary in answering the questions.

(2) The Supreme Court shall accept or rejected a certified question within 60 days of receiving the certification order. A request for certification is deemed denied if not granted within 60 days of filing in the Supreme Court.

(f) **Costs.** Fees and costs shall be the same as in civil appeals docketed before the Supreme Court. Payment of the docketing fee shall be borne by the party seeking certification. If both parties seek certification, then the parties shall each pay one-half of the docketing fee. In any other circumstances, fees and costs shall be paid as directed by the certifying court in its order of certification.

(g) **Briefs and Argument.** Upon the agreement of the Supreme Court to answer the certified questions, notice shall be given to all parties. The appellant or plaintiff in the certifying court shall file a brief within 40 days from the receipt of the notice, and the opposing party within 30 days from service of copies of the appellant or plaintiff's brief. Briefs must be in the manner and form of briefs as provided in Rules 22 and 25, and oral arguments shall be as provided in Rule 26.

(h) **Opinion.** The written opinion of the Supreme Court, stating the law governing each question certified, shall be sent by the clerk of the Supreme Court under the court's seal to the certifying court and to the parties. No mandate shall issue after publication of answers to

certified questions.

Rule 39. Transfers of Actions or Proceedings to and from Supreme Court.

(a) **Applications for Transfer to Supreme Court.** All applications to transfer an action or proceeding to the Supreme Court pursuant to 4 V.I.C. § 32(d) must contain a statement (i) summarizing the action or proceeding and whether the matter raises purely legal questions or requires findings of fact, (ii) identifying the issues of public importance raised in the case, (iii) explaining why those issues are of such urgency that use of the normal appellate process would be inadequate, and (iv) providing any other reasons as to how a transfer to the Supreme Court would promote the administration of justice. Proceedings on an application for transfer to the Supreme Court shall conform, so far as is practicable, to the procedure for extraordinary writs prescribed in Supreme Court Rules 13(a) and (b). In the event an application for transfer is granted, the Supreme Court shall, by order, establish the specific procedures to govern the action or proceeding.

(b) **Applications for Transfer from Supreme Court.** All applications to transfer an action or proceeding from the Supreme Court to any other court within the judicial branch pursuant to 4 V.I.C. § 32(d) must contain a statement (i) identifying the court to which a transfer is sought; (ii) explaining the basis for the other court's jurisdiction over the subject matter and the parties; and (iii) providing any other reasons as to how a transfer from the Supreme Court to another court would promote the administration of justice.

Proceedings on an application for transfer from the Supreme Court shall conform, so far as is practicable, to the procedure for consideration and filing of motions. In the event an application for transfer is granted, the rules of the court to which the action or proceeding is transferred shall govern the action or proceeding after transfer.

(c) **Docketing of Applications.** All applications to transfer an action or proceeding from a court or administrative agency to the Supreme Court brought pursuant to Rule 39(a) shall be docketed by the Clerk of the Supreme Court as an original civil proceeding, captioned as "In re [party bringing application]." However, all applications to transfer an action or proceeding from the Supreme Court to another court brought pursuant to Rule 39(b) shall be filed as a motion within the existing Supreme Court case.

Rule 40. Electronic Filing and Service

40.1. Definitions

As used in Rule 40:

(1) "Conventional filing" or "file through conventional means" means filing a document in accordance with the procedure established in Rule 15(f).

(2) "Virgin Islands Supreme Court Electronic Filing System" or "VISCEFS" means the C-Track system utilized by the Supreme Court to accept and transmit electronic documents. VISCEFS may be accessed from the Supreme Court's website at www.visupremecourt.org.

(3) "Virgin Islands Appellate Case Management System" or "VIACMS" means the C-Track system utilized by the Supreme Court to record information and documents related to all cases filed in the Supreme Court. VIACMS may be accessed from the Supreme Court's website at www.visupremecourt.org.

(4) "Document" means any pleading, motion, exhibit, order, judgment, decree, or other form of written communication or memorialization, whether prepared on paper or electronically, that is filed with the Clerk of the Supreme Court.
(5) "E-document" or "electronic document" means any document, other than an e-record, that has been e-filed in accordance with these Rules.
(6) "E-file" or "e-filing" or "electronically file" or "electronic filing" means the electronic transmission of a document to the Clerk of the Supreme Court for the purposes of filing and storing the document with the VIACMS.
(7) "E-record" means legible electronic copies of the Superior Court's certified docket entries, the order or judgment appealed from, the portions of any transcripts ordered by the parties and filed by the reporter pursuant to Rule 10(b), and any other portions of the record on appeal that have been prepared, assembled, and e-filed with the Clerk of the Supreme Court by the Clerk of the Superior Court in an electronic format as prescribed in these Rules.
(8) "E-service" or "service through electronic means" means the electronic transmission of a document in accordance with the procedure established in Rule 15(d) in lieu of serving such document through conventional service.
(9) "Electronic signature" is a signature that is either affixed or deemed to be affixed to an e-document or e-record as prescribed in Rule 40.4.
(10) "File" or "filing" means the submission of documents, either conventionally or electronically, with the Supreme Court, depending on whether the party and the matter are subject to electronic filing pursuant to Rule 40.2.
(11) "E-filer" means the Filing User whose user ID and password were used to e-file an e-document in a Supreme Court proceeding.
(12) "Filing User" means an attorney or other authorized person who has properly registered with the VISCEFS system as set forth in Rule 40.2.
(13) "Notice of Electronic Filing" refers to a notification, generated automatically upon the electronic filing of a document through VISCEFS, sent by the Clerk of the Supreme Court to all parties to an appeal or original proceeding who are subject to electronic filing pursuant to Rule 40.2, that an electronic filing has been placed on the docket and stored in the VIACMS.
(14) "Portable document format" or "PDF" means a computer file format developed by Adobe Systems for reproducing a document in a manner that is independent of the application software, hardware, and operating system originally used to create the document.

40.2. VISCEFS Filing of Documents

(a) **Scope of Electronic Filing; Exemptions.**
(1) For all appeals and original proceedings in the Supreme Court, parties represented by an attorney must e-file all briefs, motions, petitions, and other documents electronically in accordance with the procedures of these Rules unless an exemption has been obtained pursuant to Rule 40.2(a)(3) or the Supreme Court has ordered that e-filing be disallowed in a particular case.
(2) Parties proceeding *pro se* who are not members of the Virgin Islands Bar may, but are not required to, e-file documents.

(3) Notwithstanding Rule 40.2(a)(1), the Clerk of the Supreme Court may, upon motion showing extraordinary circumstances, exempt an attorney from mandatory electronic filing or registration as a Filing User, either for purposes of a particular document or for an entire case. Motions for exemption from electronic filing in all cases shall be docketed as a separate original proceeding and assigned a miscellaneous case number, while motions for exemption from electronic filing in a particular case or with respect to a particular document shall be docketed as part of the case in which the exemption is being sought.

(4) Notwithstanding Rule 40.2(a)(1), all *ex parte* motions, such as motions to file a document under seal, must only be conventionally filed.

(b) **Persons Required or Eligible to Register as Filing Users**

(1) All attorneys regularly or specially admitted to practice before the Supreme Court, as well all applicants for regular admission, are required to register as Filing Users of the Supreme Court's VISCEFS system.

(2) A party to a pending appeal or original proceeding who is not represented by an attorney and who is not an attorney may, but is not required to, register as a Filing User in the VISCEFS system solely for purposes of that case. Filing User status will be terminated upon termination of the case, and a separate request for Filing User status must be made in each case in which the *pro se* party wishes to electronically file documents through the VISCEFS system. If a *pro se* party who has registered as a Filing User subsequently retains an attorney, the attorney must immediately advise the Clerk of the Supreme Court, who shall then terminate the party's Filing User status in that case.

(3) An attorney admitted *pro hac vice* in a particular matter may register as a Filing User in the VISCEFS system solely for purposes of that case. Filing User status will be terminated upon termination of the case, and a separate request for Filing User status must be made in each case in which the attorney is admitted *pro hac vice* and wishes to electronically file documents through the VISCEFS system. If an attorney admitted *pro hac vice* ceases to represent any of the parties in a case in which Filing User status has been obtained, the attorney must immediately advise the Clerk of the Supreme Court, who shall then terminate the attorney's Filing User status in that case. Supreme Court Rule 201(c)'s requirement that all pleadings filed by an attorney admitted *pro hac vice* be signed by local counsel shall be satisfied if an electronic filing contains the local attorney's electronic signature, as set forth in Rule 40.4, or contains a statement that the local attorney has reviewed and consented to the filing. In the event an attorney admitted *pro hac vice* chooses not to register as a Filing User, local counsel will be required to register as a Filing User and file all documents electronically unless an exemption has been obtained pursuant to Rule 40.2(a)(3) or the Supreme Court has ordered that e-filing be disallowed in that particular case.

(4) The Clerk of the Superior Court and his or her designees, as well as all court reporters and transcribers, shall register as Filing Users in the VISCEFS system. Filing Users registered pursuant to this Rule 40.2(b)(4) may only e-file, as the case may be, the documents identified in Rules 40.3(j) and 40.3(k), and requests for extension of time or payment. When an individual registered as a Filing User pursuant to this Rule 40.2(b) ceases his or her employment with the Superior Court Clerk's Office or as a court reporter or transcriber, the Clerk of the Superior Court or Court Reporter Supervisor, as the case may be, must immediately advise the Clerk of the Supreme Court, who shall

then terminate that individual's Filing User status.

(5) Required registration information shall include, at minimum, the registrant's name, bar number (if an attorney), one or more email addresses for service of process, a physical address, one or more telephone numbers and, if available, a fax number. In addition, every registrant must consent to electronic service in lieu of conventional service in all cases in which electronic filing is required or permitted. Additional registration requirements may be defined by the Supreme Court and may include training as a prerequisite to registration as a Filing User. Upon successful registration, the Clerk of the Supreme Court shall issue a user ID and password to the registrant. The user ID and password shall be used exclusively by the Filing User or, if the Filing User is an attorney, by the Filing User's assistant or staff member. A Filing User shall not knowingly permit a user ID or password to be used by anyone other than the Filing User and, if the Filing User is an attorney, the Filing User's assistant or staff member. Each Filing User shall safeguard his or her user ID and password and shall immediately notify the Clerk of the Supreme Court upon discovery or suspicion that the user ID and/or password security has been breached.

(c) **Consequences of Registration as Filing User**. As a prerequisite to registration as a Filing User, all individuals eligible to register as Filing Users must

(1) acknowledge that registration as a Filing User constitutes consent to electronic service of all documents;

(2) agree to protect the security of their passwords and immediately notify the Clerk of the Supreme Court if they learn that their password has been compromised;

(3) agree to immediately notify the Clerk of the Supreme Court if their contact information, including, but not limited to, their email address, has changed;

(4) certify that, prior to submitting any document for electronic filing, the Filing User shall make all required redactions and scan the document for viruses;

(5) agree to comply with these Rules and any other regulations established as a condition to use of the VISCEFS system, including, but not limited to, the prohibition against submitting excessive filings, either in terms of quantity or length.

(d) **Sanctions.**

(1) The Clerk of the Supreme Court may, at any time, with or without notice, suspend or terminate the electronic filing privileges of any Filing User who abuses the system.

(2) Notwithstanding Rule 40.2(d)(1), the Supreme Court may sanction any Filing User or other individual who makes use of the VISCEFS system for violating any provision of these Rules or for abusing the VISCEFS system.

40.3. Procedures for Electronic Filing

(a) **Electronic Transmission Constitutes Filing.** Electronic transmission of a document through VISCEFS to the VIACMS system consistent with these Rules, together with the transmission of a Notice of Electronic Filing from the Clerk of the Supreme Court, constitutes filing of the document and entry of the document on the docket of the VIACMS kept by the Clerk of the Supreme Court under Rule 35(b). If the Supreme Court requires a party to file a motion for leave to file a document, both the motion and document at issue should be submitted electronically; the underlying document will be accepted if the Supreme Court so directs.

(b) **Timeliness of E-Filed Documents.** Documents e-filed to the Supreme Court must be

transmitted on or before 11:59 p.m., Atlantic Standard Time, to be considered timely filed that day.

(c) **Format and Style of E-Filed Documents.**

(1) **File Format.** Before e-filing a document with the Supreme Court, an e-filer must verify its legibility and completeness. It is preferred that documents created by the e-filer already be in PDF format prior to electronic filing. A document created with a word processor using Microsoft Word or WordPerfect will be converted to PDF format by the Supreme Court's VISCEFS system when electronically filed with the Court. However, scanned documents, except for those in TIFF and JPEG format, as well as documents created with other word processors, must be converted to PDF format by the e-filer before they are electronically filed with the Supreme Court.

(2) **Style and Binding Requirements.** The provisions of Rule 15(a), which prescribe the color of covers for briefs and appendices and how briefs, appendices, motions, and other paper documents are to be bound, shall not apply to documents filed electronically, but shall remain in effect for paper copies of those documents.

(d) **Multiple Documents as Single Filing Prohibited.** E-filers are expressly prohibited from e-filing multiple motions, petitions, or other documents as a single filing or docket entry in the VIACMS system. For example, an e-filer may not combine a motion for extension of time to file a brief with a motion for a limited remand, or combine a motion to dismiss with an opposition to a motion for expedited appeal. Failure to comply with this Rule may result in rejection of the combined document by the Supreme Court.

(e) **Attachments and Exhibits to Motions, Petitions, and Other Filings**

(1) Notwithstanding Rule 40.3(d), an e-filer must submit, in PDF format, all documents referenced as exhibits or attachments to a motion, petition, or other filing. Such exhibits or attachments must be filed as multiple documents submitted with the motion, petition, or filing in which they are referenced as part of the same docket entry. An e-filer must submit as exhibits or attachments only those excerpts of the referenced documents that are directly germane to the matter under consideration by the Supreme Court. Excerpted material must be clearly and prominently identified as such. The Supreme Court may require parties to file additional excerpts or the complete document.

(2) The size of a single document submitted to the VISCEFS system cannot exceed twenty-five megabytes, but a Filing User may submit multiple documents as part of a single filing.

(3) Those exhibits and attachments that cannot be submitted in PDF format, or are not legible when scanned or converted to PDF format, shall be forwarded to the Supreme Court and to all parties in the case in paper form within twenty-four hours of the date the motion, petition, or other document is e-filed by the e-filer, unless the day following the filing date for the motion, petition, or other filing is a Saturday, Sunday, or legal holiday, in which event the exhibit or attachment shall be forwarded no later than the end of the next day that is not a Saturday, Sunday, or legal holiday. Regular mail of the United States Postal Service is a sufficient means for delivering paper copies of exhibits and attachments pursuant to this Rule. A notice regarding the e-filer's inability to electronically submit the exhibit or attachment shall be filed electronically, and shall also accompany all copies of the motion, petition, or other filing that are served on the parties, regardless of whether the motion, petition, or other filing is served on the party electronically or in paper form. Upon final disposition of the proceeding, the Supreme

Court may dispose of all copies of paper exhibits and attachments that were not e-filed with the principal motion, petition, or other filing.

(f) **E-Document as Official Record.** After an e-document has been filed electronically, the official record is the e-document stored by the VIACMS, and the filing party is bound by the e-document as filed. An e-document filed is deemed filed at the date and time stated on the Notice of Electronic Filing from the Supreme Court.

(g) **Electronic Versions of Previously-Filed Paper Documents.** Upon the Supreme Court's request, a Filing User must promptly provide the Clerk of the Supreme Court, in a format designated by the Supreme Court, an identical electronic version of any paper document previously filed in the same appeal or original proceeding by that Filing User.

(h) **Paper Copies of E-Documents.** In addition to electronically filing a brief or appendix with the VISCEFS system, seven paper copies of briefs and four paper copies of the appendices must be filed with the Clerk of the Supreme Court for the convenience of the Supreme Court within three days of the electronic transmission of the e-document. No paper copies of motions, petitions, or other documents need be filed unless otherwise required by these Rules or directed by the Clerk of the Supreme Court.

(i) **Rejection of E-Documents.** Both the Supreme Court and the Clerk of the Supreme Court may reject any e-document, including the e-record, for failure to comply with this Rule 40. Upon rejection of an e-document, the Supreme Court or the Clerk of the Supreme Court shall notify the e-filer as well as all other parties to the action. Such notice shall state the reason or reasons for the rejection, as well as the amount of time, if any, within which the e-filer may file and serve a corrected e-document. If the notice does not specify the time in which a corrected e-document may be filed, the e-filer shall be deemed to have seven days from service of the notice of the rejection to file and serve a corrected e-document.

(j) **Clerk of the Superior Court's Duty to Transmit E-Record.**

(1) The Clerk of the Superior Court shall e-file the e-record with the Clerk of the Supreme Court within ten days from the date the last reporter's transcript is filed with the Clerk of the Superior Court, or, in the event there is no reporter's transcript, within twenty-eight days from the filing of the notice of appeal, unless the time is shortened or extended by an order of the Supreme Court.

(2) The e-record shall be assembled with the cover page first, followed by the order or judgment appealed from, the certified docket entries, any court reporter transcripts that have not been e-filed pursuant to Rule 40.3(k), all other documents that constitute the record, and a certificate of completion and transmittal and the Clerk of the Superior Court's index to the entire record. The Clerk of the Superior Court's index shall include an index to the documents that are contained in the e-record and an index to the documents incapable of being legibly reproduced in an electronic format. Unless otherwise ordered by the Supreme Court, the Clerk of the Superior Court shall retain custody of all documents incapable of being legibly reproduced in an electronic format, and the Clerk of the Superior Court shall allow all attorneys and parties proceeding *pro se* to access such documents while preparing their briefs.

(3) Paper copies of the documents constituting the e-record or the original file shall not be transmitted by the Clerk of the Superior Court unless during the pendency of the appeal the Clerk of the Supreme Court directs that designated parts of the record be transmitted.

(4) Notwithstanding Rule 40.3(j)(2), the Supreme Court may request that the Clerk of the Superior Court supplement the e-record by e-filing additional portions of the record in order to address a motion or the issues on appeal.

(k) **Court Reporter's Duty to E-File Transcripts.** In accordance with Rule 10(b) and 11(b), the court reporter shall immediately e-file Part II of the TPO with the Supreme Court after receiving Part I of the TPO from the party requesting the transcript, and, once the necessary financial and other arrangements have been satisfied, shall file physical and electronic versions of all transcripts with the Clerk of the Superior Court and e-file Part III of the TPO with the Clerk of the Supreme Court.

(l) **Notice of Entry of Court-Issued Documents.** Unless otherwise provided for in these Rules or by internal court procedures, the Clerk of the Supreme Court shall electronically serve all orders, decrees, judgments, and other court-issued documents (except those issued under seal) on parties who are Filing Users through the VISCEFS or, if the VISCEFS does not yet have this functionality, by sending an email to the most recent email address provided by the Filing User.

(m) **Docket or Text-Only Orders.** An order, but not a final judgment or decree, may be issued by the Supreme Court as a text-only entry on the docket, without an attached document. Such entry shall include the justice or Clerk's electronic signature. The justice or Clerk's electronic signature is valid for all purposes as official and binding on the parties.

40.4. Electronic Signatures

(a) The user ID and password required to submit documents to the VISCEFS system serve as the Filing User's signature on all electronic documents filed with the court. They also serve as a signature for purposes of these Rules, and any other purpose for which a signature is required in connection with proceedings before the Supreme Court. No Filing User or other person may knowingly permit or cause to permit a Filing User's user ID and password to be used by anyone other than an authorized agent of the Filing User.

(b) When e-filing any document, the name of the e-filer must be preceded by an "/s/" and typed in the space where the signature would otherwise appear, which will constitute the e-filer's electronic signature. Alternatively, a scanned hand-written signature may be used as an electronic signature.

(c) Documents requiring signatures of more than one party must be electronically filed either by:
(1) submitting a scanned document containing all necessary signatures;
(2) submitting a statement representing the consent of all the other parties on the document;
(3) identifying on the document the parties whose signatures are required and submitting a notice of endorsement by the other parties no later than three business days after filing; or
(4) in any other manner approved by the Supreme Court.

Documents that are electronically filed and require original signatures other than that of the e-filer must be maintained in paper form by the Filing User until two years after the issuance of the mandate or order closing the case, whichever is later. If an attorney receives permission to withdraw and a new attorney enters an appearance, documents that require original signatures must be transferred to the new attorney of record. On request of the Supreme Court, an e-filer must provide original documents for review.

(d) Electronically represented signatures of all parties and Filing Users as described in this Rule 40.4 are presumed to be valid signatures. If any party, attorney of record, Filing User, or any

other individual objects to the representation of his or her signature on an electronic document, he or she must, within fourteen calendar days, file a notice setting forth the basis of the objection.

40.5. Technical Failures and Difficulties Caused by Technology

If a Filing User misses a filing deadline as the result of an inability to e-file a document as a result of difficulty caused by technology occurring on the deadline date for filing the document, the Filing User must, no later than the first day on which the Supreme Court is open for business following the deadline date for filing the document, file the document accompanied by a motion to accept the document as timely filed. The motion shall include a declaration stating the reason or reasons for missing the deadline and stating why the document should be accepted as timely filed. If the Supreme Court grants the motion to accept the document as timely filed, the document shall be deemed timely filed on the date the Supreme Court grants the motion, notwithstanding any statute or Supreme Court rule to the contrary. The Supreme Court will not accept the document as filed on the deadline date if it is not accompanied with a motion to accept the document as timely filed or if it is filed after the first day on which the Supreme Court is open for business following the deadline date.

40.6. Public Access to Electronic Case Files

(a) The Clerk of the Supreme Court shall provide public access to the dockets and documents of all cases maintained in VIACMS through public computers; provided, however, that the Clerk of the Supreme Court shall restrict access to confidential, sealed, or otherwise restricted dockets and documents maintained in VIACMS consistent with Rule 40.6(d).
(b) The Supreme Court shall provide internet access to the dockets of VIACMS cases (excluding those that are sealed, confidential, or otherwise restricted) without cost. The Supreme Court may, but is not required to, provide internet access to confidential, sealed, or otherwise restricted records to parties and attorneys entitled thereto consistent with Rule 40.6(d).
(c) Filing Users shall protect personal information in public records and documents by making the redactions required by Rule 15(c).
(d) Unless otherwise provided in these Rules or by court order:
(1) If a case is designated as confidential in VIACMS, members of the public may view the docket entries for the case, but only the attorneys and unrepresented parties (if registered as Filing Users) may view the documents in the case through VIACMS.
(2) If a case is designated as sealed in VIACMS, neither the docket entries nor the documents associated with the case may be viewable by the public, the attorneys, or the parties through VIACMS.

40.7. Authority of Clerk

(a) The Clerk of the Supreme Court is authorized to issue notices, guidelines, user guides, and the like that provide clarification or assistance to facilitate electronic filing. Such clarification or assistance may be made available on the Supreme Court's website.
(b) Notwithstanding Rules 2, the Clerk of the Supreme Court is authorized to temporarily suspend or modify any portion of this Rule 40, including imposing additional registration

requirements or suspending Rule 40.2's mandatory electronic filing requirements, in order to respond to a technical failure, a security breach, or otherwise further the interests of justice.

Rule 41. Masters.

(a) **Appointment; Powers.** The Supreme Court may appoint a special master to hold hearings, if necessary, and to recommend factual findings and disposition in matters ancillary to proceedings in the Supreme Court. Unless the order referring a matter to a master specifies or limits the master's powers, those powers include, but are not limited to, the following:

(1) regulating all aspects of a hearing;

(2) taking all appropriate action for the efficient performance of the master's duties under the order;

(3) requiring the production of evidence on all matters embraced in the reference; and

(4) administering oaths and examining witnesses and parties.

(b) **Compensation**. If the master is not a judge or court employee, the Supreme Court must determine the master's compensation and whether the cost is to be charged to any party.

EXHIBIT 2

VIRGIN ISLANDS SUPREME COURT RULE 210
(as amended)

RULES GOVERNING THE APPOINTMENT OF COUNSEL TO REPRESENT INDIGENT PARTIES ON APPEAL

The Supreme Court of the Virgin Islands, in order to effectuate the provisions of 5 V.I.C. § 3503, adopts the following procedure to provide and secure adequate representation on appeal for any person who is financially unable to employ counsel.

210.1 Panels of Attorneys

(a) *Establishment of Attorney Panel*. The Clerk of the Supreme Court, at the direction of the Supreme Court and under the supervision of the Chief Justice, shall prepare and maintain a panel of regularly-admitted members of the Virgin Islands Bar who are eligible to practice law in the Virgin Islands and who have volunteered, been recommended, or otherwise selected to provide representation to indigent defendants on a recurring basis.

(b) *Selection of Attorneys to Serve on Panels*. The Chief Justice may add or remove attorneys from panel at any time as he or she sees fit, based on the qualifications and availability of those attorneys and subject to review by the entire Supreme Court. The Clerk of the Supreme Court shall accept applications and receive recommendations for designation to the panel, and submit these names to the Chief Justice for consideration and final approval. The attorneys designated on the panel may be identified by Judicial Division of the Superior Court to facilitate appointments to cases originating in either Judicial Division.

(c) *Absence or Insufficiency of Attorney Panels*. In the event a panel has not been established, or the number of attorneys who have voluntarily applied to join the panel is insufficient to provide adequate representation to all litigants eligible for court-appointed counsel on appeal, the Clerk is authorized to appoint, on a rotating basis, any regularly-admitted member of the Virgin Islands Bar who is eligible to practice law in the Virgin Islands.

(d) *Docketing of Application*. An attorney may apply for an appointment to the attorney panel by submitting an application, on a form prepared by the Clerk of the Supreme Court, and filing it with the Clerk. Each application shall be docketed as a separate original proceeding, assigned a miscellaneous case number, and be designated as confidential for purposes of Supreme Court Rule 40.6. The Chief Justice shall, by order, grant or deny the application.

210.2 Determination of Need for Appointed Counsel

(a) *Generally*. In every direct criminal or quasi-criminal appeal, whether undertaken by a defendant or the government, a defendant who has been granted permission to proceed *in forma pauperis* pursuant to Supreme Court Rule 3(b) and 4 V.I.C. § 513 is eligible to have counsel appointed for him or her by the Supreme Court. If a defendant has not moved to proceed *in forma pauperis* on appeal and does not appear to be represented by

counsel, the Clerk of the Supreme Court shall promptly notify the defendant that he or she has a right to be represented by counsel and that the Court will appoint counsel to represent him or her if the defendant files, and the Court grants, a motion to proceed *in forma pauperis*.

(b) *Continuation of In Forma Pauperis Status.* Pursuant to Supreme Court Rule 3(c), a criminal defendant who has received permission to proceed *in forma pauperis* in the Superior Court may continue to proceed *in forma pauperis* in the Supreme Court, and remain eligible for appointment of counsel in the Supreme Court, without filing a new motion to proceed *in forma pauperis*, provided that the defendant's financial circumstances have not changed.

(c) *Continued Inquiry Permitted*. At any time after granting *in forma pauperis* status, allowing *in forma pauperis* status to continue, or appointing counsel, the Supreme Court may inquire into a defendant's financial status to determine whether the defendant continues to meet the requirements for *in forma pauperis* status or otherwise remains financially unable to employ counsel. Should an attorney appointed to represent a defendant discover, during the course of that representation, that the defendant is financially able to pay for his own legal representation, court-appointed counsel shall, notwithstanding any rule to the contrary, promptly notify the Court of this fact.

(d) *Appointment Authorized When in the Interests of Justice*. Notwithstanding Rule 210.2(a) or any other court rule, the Supreme Court may, at its sole discretion, appoint an attorney to represent a litigant in any matter, whether criminal or civil, if it determines that appointment of an attorney is required in the interests of justice.

210.3 Appointment of Counsel

(a) *Continuation of Superior Court Representation*. Any attorney ordered to represent a defendant in the Superior Court pursuant to 5 V.I.C. § 3503 shall continue to represent that litigant on appeal unless expressly relieved by order of the Superior or Supreme Court. After proceedings in the Superior Court have concluded, the Superior Court may not grant any court-appointed attorney permission to withdraw as counsel until it has ascertained that a notice of appeal has been filed in the Supreme Court on the litigant's behalf or that the litigant has chosen not to file a notice of appeal despite being made aware of the right to appeal. In the event the Superior Court has granted an attorney permission to withdraw after a notice of appeal has been filed, the Superior Court and the attorney who has been granted permission to withdraw shall immediately notify the Supreme Court of the fact and the need to appoint an attorney to represent the litigant on appeal.

(b) *Appointments by Supreme Court*. In those cases in which the Supreme Court must make an appointment in the first instance, or in which it becomes necessary to appoint a new attorney to represent a litigant on appeal, the Clerk of the Supreme Court shall appoint the Office of the Territorial Public Defender to represent the litigant. In the event the Office of the Territorial Public Defender is disqualified or is authorized by the Chief Justice or the Supreme Court to withdraw its representation of the litigant, the Clerk of the Supreme Court shall, at the direction of the Supreme Court and under the supervision of the Chief Justice, appoint on a rotating basis an attorney from the panel established pursuant to Supreme Court Rule 210.1(a) or, if such an appointment is not possible,

appoint an attorney from the full list of regularly-admitted attorneys pursuant to the procedure provided for in Supreme Court Rule 210.1(c). For the convenience of court-appointed counsel and the defendant, the Clerk may, but is not required to, appoint an attorney from the panel who resides in the same Judicial Division of the Superior Court in which the case originated. Selection of court-appointed counsel shall be the sole and exclusive responsibility of the Supreme Court, and no defendant entitled to court-appointed representation shall be permitted to select the attorney appointed to represent him.

(c) *Multiple Court-Appointed Attorneys Prohibited*. Absent a determination by the Supreme Court that a case is exceptionally complex, only a single attorney may be appointed to represent a single defendant.

(d) *Substitution of Counsel*. The Supreme Court may, on its own motion or by motion of court-appointed counsel, substitute one court-appointed counsel for another.

(e) *Privately Retained Counsel*. Privately retained counsel representing the defendant in the Superior Court may, upon a finding by the Supreme Court that the defendant now qualifies for *in forma pauperis* status and has become financially unable to pay counsel whom he has previously retained, be eligible for an appointment to serve as the defendant's court-appointed appellate counsel. Such appointments may be, but are not required to be, made retroactive to include any representation in the Supreme Court furnished prior to the appointment. If a litigant is unable to pay privately retained counsel and privately retained counsel does not desire an appointment to serve as the litigant's court-appointed appellate counsel, privately retained counsel nevertheless possesses an obligation to continue to represent the litigant and safeguard the litigant's rights, including filing a notice of appeal in the Supreme Court and a motion to proceed *in forma pauperis* and for appointment of counsel in the Supreme Court, until new appellate counsel is appointed. Notwithstanding privately retained counsel's wish to not continue representation as a litigant's court-appointed counsel, the Supreme Court reserves the right to order privately retained counsel to continue to represent the litigant on appeal.

(f) *Cases Involving Multiple Defendants*. In appeals of cases involving more than one defendant, one or more attorneys may be appointed to represent all defendants on appeal, but where circumstances warrant—such as conflicting interests of different defendants—separate attorneys may be appointed to represent each defendant.

(g) *Duty to File and Prosecute Petition for Writ of Certiorari*. If, after an adverse decision by this Court, the defendant seeks to file a petition for writ of certiorari, court-appointed counsel shall prepare a petition for writ of certiorari and other necessary and appropriate documents in connection therewith, and shall otherwise continue to represent the defendant subject to the rules promulgated by the court to which certiorari is sought.

(h) *Remands to Superior Court*.

(1) If the Supreme Court, after reversing or affirming a decision of the Superior Court, remands the matter for further proceedings in the Superior Court, court-appointed counsel shall possess a duty to continue to represent the defendant in the Superior Court until expressly relieved by order of the Superior Court.

(2) In the event the Supreme Court holds an appeal in abeyance pending a limited remand to the Superior Court, court-appointed counsel possesses a duty to continue to represent the defendant in those proceedings. During such a limited remand, only the

Supreme Court shall have jurisdiction to grant a court-appointed attorney permission to withdraw as counsel.

210.4 Payment of Appointed Counsel

(a) *Compensation and Reimbursement*. Counsel appointed to represent a defendant in this Court pursuant to Supreme Court Rule 210.3 shall be compensated at the rates set forth in "Addendum A" to this Rule, which the Supreme Court may change from time to time, and may receive reimbursement for expenses reasonably incurred pursuant to that representation.

(b) *Final Payment*. No later than ninety (90) days of the date the Supreme Court issues its final order or opinion, court-appointed counsel may submit a claim for compensation and reimbursement, using forms prepared and furnished by the Clerk of the Supreme Court. All claims for final payment must, at a minimum, include a written statement specifying the time expended, services rendered, and expenses incurred while the case was pending in the Supreme Court.

(c) *Interim Payment Prohibited*. Interim payments to court-appointed counsel, absent permission of the Chief Justice, are expressly prohibited. Permission for interim payment shall not be granted unless court-appointed counsel has made a strong showing that extraordinary circumstances warrant an interim payment in a particular matter.

(d) *Disallowed Compensation and Reimbursement*. Court-appointed counsel may not be compensated or reimbursed for

(1) work performed by, or consultations with, other attorneys, paralegals, administrative assistants, law clerks, investigators, consultants, or other professionals unless court-appointed counsel sought, and obtained, permission from this Court to utilize such individuals; or

(2) activities adverse to the interests of the defendant or that are not necessary to providing full and fair representation to the defendant, including, but not limited to, motions to withdraw as counsel, motions for extension of time, motions for leave to file out of time, and time spent preparing court-appointed counsel's request for payment.

(e) *Reasonableness of Payment Request*. Pursuant to 5 V.I.C. § 3503, all payments to court-appointed counsel must be reasonable. At all times, the burden of establishing that a request for compensation and reimbursement is reasonable remains with court-appointed counsel. Except for requests for final payment that may be reviewed by the Clerk of the Supreme Court pursuant to Supreme Court Rule 210.4(f), the Chief Justice shall determine the reasonableness of any claim for payment or, at his or her discretion, may refer the matter to the entire Supreme Court. Absent a showing that a matter is unusually complex or novel, claims for final payment exceeding the maximum amounts set forth in "Addendum A" are presumptively unreasonable.

(f) *Authority of Clerk to Approve or Reject Final Payment*. The Clerk of the Supreme Court may approve or reject any claim for final payment that does not exceed the maximum amounts set forth in "Addendum A," inclusive of any interim payments previously authorized. Upon motion of court-appointed counsel, the Chief Justice may review any decision entered by the Clerk pursuant to this Rule.

(g) *Issuance of Payment*. Upon approval by the Clerk or the Chief Justice, as the case may

be, the Clerk shall forthwith forward all approved claims to the Office of the Administrative Director of the Supreme Court for payment. In the event a claim for payment has been rejected, payment shall not issue until court-appointed counsel has submitted—and the Clerk or the Chief Justice, as the case may be, has approved—a new request for compensation and reimbursement curing the deficiencies that resulted in rejection of the last request for payment.

(h) *Exclusive Payment*. Any payments authorized pursuant to this Rule shall be the sole compensation afforded to a court-appointed appellate attorney. Under no circumstances may a court-appointed attorney request or accept any payment or promise of payment for representation of a litigant. Any court-appointed attorney suspected of requesting or accepting any payment in violation of this provision may be referred to the appropriate Subcommittee of the Ethics & Grievance Committee of the Virgin Islands Bar for further investigation and, if appropriate, a formal disciplinary proceeding.

(i) *Proceedings in Other Courts*. Any court-appointed attorney who files and prosecutes a petition for writ of certiorari in the United States Court of Appeals for the Third Circuit or the Supreme Court of the United States pursuant to Supreme Court Rule 210.3(g), or who represents the defendant in subsequent Superior Court proceedings pursuant to Supreme Court Rule 210.3(h), shall be compensated by and pursuant to the rules governing proceedings in those courts.

(j) *Territorial Public Defender*. The Supreme Court shall not, as part of its own budget, compensate or reimburse the Office of the Territorial Public Defender for any expenses associated with its representation of a litigant, including the costs of transcripts in the trial court.

(k) *Docketing of Compensation Request*. A court-appointed attorney may seek an interim or final payment by submitting an application, on a form prepared by the Clerk of the Supreme Court, and filing it with the Clerk along with the written statement required by Rule 210.4(b). Each application shall be docketed as a separate original proceeding, assigned a miscellaneous case number, and be designated as confidential for purposes of Supreme Court Rule 40.6. An application for payment under this Rule 210.4 need not be served on counsel to any other party in the underlying Supreme Court proceeding. The Clerk or the Chief Justice, as the case may be, shall accept, reject, or modify the payment request by order.

210.5 Forms and Reports

(a) *Standard Forms*. The Clerk of the Supreme Court shall, in corroboration with the Office of the Administrative Director of the Supreme Court, prepare standardized forms, including forms to proceed *in forma pauperis* and for final payment of court-appointed counsel, which, upon approval by the Supreme Court, may be used by litigants and attorneys.

(b) *Reports*. The Clerk of the Supreme Court shall submit reports on the appointment of counsel under this Rule to the Office of the Administrative Director of the Supreme Court, in such form and at such times as the Administrative Director of the Supreme Court, the Clerk of the Supreme Court, or the Chief Justice may specify.

ADDENDUM "A"

TABLE TO GOVERN COMPENSATION AND REIMBURSEMENT OF COURT-APPOINTED APPELLATE COUNSEL IN SUPREME COURT PROCEEDINGS

(effective October 1, 2010)

MAXIMUM HOURLY RATES (All Cases)	
Hours in Court	$75.00
Hours Out of Court	$75.00
MAXIMUM FINAL PAYMENT (inclusive of all compensation, reimbursement, and interim payment)	
First Degree Murder	$7,500.00
All Other Cases	$5,000.00

EXHIBIT 3

VIRGIN ISLANDS SUPREME COURT RULES
(as amended)

RULE

Rule 1. Scope of Rules; Terms; Sessions; Seal; Filing in Superior Court.

(a) Title and Citation

~~(b) Effective Date~~

(b~~c~~) Scope of Rules

(c~~d~~) Authority for Promulgation of Rules

(d~~e~~) Relationship to Previous Rules

(e~~f~~) Term of Court

(f~~g~~) Court Sessions

(g~~h~~) Court Seal

(h~~i~~) Filing in Superior Court

(i) Rules Not to Affect Jurisdiction

Rule 2. Suspension of Rules.

Rule 3. Payment of Docket Fees.

(a) Payment of Docket Fees and Permission to Proceed *In Forma Pauperis*

(b) Appeal *In Forma Pauperis*

(c) *In Forma Pauperis* Status in Criminal Matters

Rule 4. Appeal as of Right - How Taken.

(a) Filing the Notice of Appeal

(b) Joint or Consolidated Appeals

(c) Content of the Notice of Appeal

(d) Service of the Notice of Appeal

(e) Payment of Fees

(f) Notice to Trial Judge; Opinion in Support of Order

(g) Notice of Appeal in *Pro Se* Cases

(h) Questions Which May Be Raised on Appeal

Rule 5. Appeal as of Right - When Taken.

(a) Appeals in Civil Cases

(b) Appeals in Criminal Cases

(c) Appeal by an Inmate Confined in an Institution

(d) Appeals in Juvenile Matters

(e) Expedited Appeals

(f) Case Caption

Rule 6. Appeals by Permission.

(a) Petition for Permission to Appeal

(b) Motion for Expedited Review

(c) Content of Petition; Answer

(d) Number of Copies

(e) Grant of Permission; Cost Bond

Rule 7. Appellate Mediation and Conciliation.

(a) How Initiated

(b) Attendance at Sessions

(c) Clerk as Administrator; Case Selection

(d) Submission and Service of Papers
(e) Argument Schedule; Motion to Postpone
(f) Privileged Discussions
(g) Mediation Not Binding
(h) Costs
(i) Selection of Mediator
(j) Settlement
Rule 8. Bond and Stay or Injunction Pending Appeal in Civil Case; Release Pending Appeal in Criminal Case.
(a) Bond or Other Security in Civil Case
(b) Requests for a Stay of Judgment or Order of Superior Court in Civil Case
(c) Conditioning Stay upon Giving of Bond in Civil Case
(d) Motions for Release Pending Appeal in Criminal Case
Rule 9. Pretrial Release in a Criminal Case.
(a) Order of the Superior Court
(b) Duties of the Clerk of the Superior Court
Rule 10. The Record on Appeal.
(a) Composition of the Record on Appeal
(b) The Transcript of Proceedings; Duty of Appellant to Order; Notice to Appellee if Partial Transcript Is Ordered
(c) Statement of the Evidence or Proceedings When No Report Was Made or When the Transcript Is Unavailable
(d) Agreed Statement of Facts on Appeal
(e) Correction or Modification of the Record
Rule 11. Transmission of the Record on Appeal.
(a) Duty of Appellant
(b) Duty of Court Reporter to Coordinate Prepar~~e~~ation and File~~i~~ng of Transcript; Notice to Supreme Court; Duty of Clerk to Transmit Certified Copy of the Docket Entries in Lieu of Record; Retention of Record in Superior Court
(c) Transmission of Record to Supreme Court
(d) Partial Record with Motions
Rule 12. Docketing of the Appeal~~; Filing a Representation Statement~~.
~~**(a) Docketing**~~
~~**(b) Statement of Representation**~~
Rule 13. Writs of Mandamus and Prohibition Directed to a Judge or Judges and Other Extraordinary Writs.
(a) Mandamus or Prohibition to a Judge or Judges; Petition for Writ; Service and Filing
(b) Denial; Order Directing Answer
(c) Other Extraordinary Writs
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(a) Application for the Original Writ
(b) Appeals as of Right from Superior Court
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(a) Format, Caption, and Footnotes

(b) Filing
(c) ~~Service~~ Required Redactions
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Rule 16. Computation of Time.
(a) Application of Rule 9 of the Rules Governing the Superior Court
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Rule 18. Corporate Disclosure; Business Entity Involved in an Appeal; Representation of a Corporation.
(a) Required Disclosure for a Business Entity
(b) Representation
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(h) Briefs in Cases Involving Multiple Appellants or Appellees
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40.6 Public Access to Electronic Case Files
40.7 Authority of Clerk
Rule 41. Masters
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(b) Compensation.

VIRGIN ISLANDS SUPREME COURT RULES

Rule 1. Scope of Rules; Terms; Sessions; Seal; Filing in Superior Court.

(a) **Title and Citation.** These Rules shall be known as the Virgin Islands Supreme Court Rules. They shall be cited as V.I.S.CT.-R. in the long form, and VISCR in the short form.

~~(b) **Effective Date.** These Rules become effective on January 1, 2007.~~

(b~~c~~) **Scope of Rules.** These Rules govern procedure in ~~appeals to~~all proceedings in the Supreme Court of the Virgin Islands ["Supreme Court"]~~ from the Superior Court of the Virgin Islands ["Superior Court"]. ~~.

(c~~d~~) **Authority for Promulgation of Rules.** These Rules are promulgated pursuant to the authority granted by V.I. CODE ANN. tit. 4, §§ 31(c) and 34(a), and section 3 of Act No. 6687, as enabled by sections 21(a) and (c) of the Revised Organic Act of 1954; 48 U.S.C. § 1613a. The Revised Organic Act of 1954 is found at 48 U.S.C §§ 1541-1645 (1995), *reprinted in* V.I. CODE ANN., Historical Documents, Organic Acts, and U.S. Constitution at 73-177 (1995 & Supp. 1997) (preceding V.I. CODE ANN., tit. 1).

(d~~e~~) **Relationship to Previous Rules.** These Rules supersede all previous appellate rules applicable to appeals from the Superior Court of the Virgin Islands. They shall govern all appeals filed in this Court from the Superior Court ~~subsequent to the time they take effect~~on or after January 29, 2007. Appeals taken to and pending in the Appellate Division of the District Court ~~on the effective date of these Rules and the assumption of this Court's jurisdiction pursuant to Section 3 of Act No. 6687,~~ prior to January 29, 2007 shall be governed by the appellate rules then in effect as promulgated by the Appellate Division of the District Court.

(e~~f~~) **Term of Court.** There shall be one term of the Court which shall coincide with the calendar year. Oral arguments will be scheduled as provided in Rule 27 or as otherwise ordered by the Court.

(f~~g~~) **Court Sessions**. The Court shall hold regular sessions on the island of St. Croix commencing on such dates as the Court shall designate. Special sessions may be held at any time or place within the Virgin Islands when so ordered by the Court.

(g~~h~~) **Court Seal**. The seal of the Court shall be the seal specified by 4 V. I. C. § 21(d). The Clerk is the custodian of the seal, which is the means of authentication of all process, orders, and other papers requiring authentication by the court.

(h~~i~~) **Filing in Superior Court**. When these rules provide for filing a motion or other document in the Superior Court of the Virgin Islands, the procedure must comply with the practice of the Superior Court.

(i) **Rules Not to Affect Jurisdiction.** These rules shall not be considered to extend or limit the jurisdiction of the Supreme Court of the Virgin Islands as established by law. Where the time to appeal or seek other relief is set by statute, provisions in these rules for granting an enlargement or extension of time to file a notice of appeal or other document shall not be applicable to extend the statutory time limit.

Rule 2. Suspension of Rules.

In the interest of expediting decision, or for other good cause shown, the Court, the Chief Justice of the Supreme Court of the Virgin Islands, or any ~~appellate~~ panel of the Court acting

through its presiding justice may suspend the requirements or provisions of any of these Rules in a particular case on their own motion or on application of a party, specifying in an order the procedure required, except that the time for filing a notice of appeal or a request for permission to appeal through certification, out of time, or as otherwise prescribed by law, may only be enlarged pursuant to Rule 5.

Rule 3. Payment of Docket Fees.

(a) **Payment of Docket Fees and Permission to Proceed *In Forma Pauperis*.** All appeals, petitions for writ of mandamus, habeas corpus, or other extraordinary writs, and any other documents which initiate a new proceeding in the Supreme Court must be accompanied by the appropriate docket fee, deposited with the Clerk of the Supreme Court, unless permission to proceed *in forma pauperis* ["IFP"] has been granted. If a proceeding is docketed without prepayment of the applicable docketing fee, the appellant shall pay the fee within fourteen days after docketing. If the appellant fails to do so and has not filed a motion to proceed IFP accompanied by supporting documents, the Clerk of the Supreme Court is authorized to dismiss the appeal without further notice.

(b) ~~**Appeal**~~ ***In Forma Pauperis*.** A party to a civil or criminal appeal or other Supreme Court proceeding who desires to proceed ~~on appeal~~ IFP shall file a motion for leave so to proceed, together with an affidavit and other documentation (full financial disclosure), showing, in detail, the party's inability to pay fees and costs or to give security therefor, the party's belief that the party is entitled to redress, and a statement of the issues which that party intends to present on appeal. ~~Petitions~~Motions to proceed IFP shall conform with 4 V.I.C. § 513 as well as Supreme Court Rule 210 and will be determined by the Supreme Court. If the motion is granted, the party may proceed without further application and without prepayment of fees or costs in either the Supreme Court or Superior Court or the giving of security therefor. If the motion is denied, the Supreme Court shall state in writing the reasons for the denial.

(c) ***In Forma Pauperis* Status in Criminal Matters.** In criminal matters, IFP status will continue on appeal if appellant or petitioner has been permitted to proceed IFP by the Superior Court as one who is financially unable to obtain adequate defense, although the Supreme Court may, consistent with Supreme Court Rule 210, continue to inquire as to whether the appellant or petitioner continues to meet the requirements for IFP status. IFP status will not be continued if, before or after the notice of appeal is filed, the Superior Court ~~(or Supreme Court in an appeal of a habeas corpus proceeding)~~ certifies that the appeal is not taken in good faith or finds that the party is otherwise not entitled to continue to proceed IFP, in which event the Superior Court ~~or Supreme Court~~ shall state in writing the reasons for such certification or finding. Supreme Court Rule 210 shall govern appointment of appellate counsel for criminal defendants who qualify for IFP status.

Rule 4. Appeal as of Right - How Taken.

(a) **Filing the Notice of Appeal.** An appeal permitted by law as of right from the Superior Court to the Supreme Court shall be taken by filing a notice of appeal with the Clerk of the ~~Superior~~ Supreme Court within the time allowed by Rule 5. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the Supreme Court deems appropriate, which may

include dismissal of the appeal.

(b) **Joint or Consolidated Appeals.** If two or more persons are entitled to appeal from a judgment or order of the Superior Court and their interests are such that joinder is practicable, they may file a joint notice of appeal, or may join in an appeal after filing separate timely notices of appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the Supreme Court upon its own motion, upon motion of a party, or by stipulation of the parties to the several appeals. When parties have filed a joint notice of appeal, only one appeal will be docketed and only one docketing fee paid. Parties filing a joint notice of appeal shall file a single consolidated brief and appendix. When the parties have filed separate notices of appeal, each party shall pay a separate docket fee, but the appeals may be joined or consolidated by the Supreme Court.

(c) **Content of the Notice of Appeal.** The notice of appeal shall specify the party or parties taking the appeal and, if not electronically filed, their physical addresses and telephone numbers; shall designate the judgment, order, or part thereof appealed from and the reason(s) or issue(s) to be presented on appeal. An appeal shall not be dismissed solely for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice**,** but any omission of matters of substance may be grounds for sanctions.

(d) **Service of the Notice of Appeal.** Appellant shall electronically or conventionally, as the case may be, serve notice of the filing of a notice of appeal ~~by filing a date stampted filed copy thereof with the Clerk of the Supreme Court~~ in accordance with Rules 15 and 40.3 on counsel of record for each party other than the appellant, or, if a party is not represented by counsel, by conventional service to the last known address of that party; and shall file a certificate of service with the notice of appeal. After docketing a notice of appeal, the Clerk of the Supreme Court shall promptly transmit a copy of the notice of appeal to the Clerk of the Superior Court, who ~~The Clerk of the Superior Court~~ shall transmit forthwith ~~a copy of the notice of appeal and~~ a designation of the parties and a certified list of the docket entries to the Clerk of the Supreme Court, whether or not motions are pending, and begin assembling the record. When an appeal is taken in a criminal case, counsel shall also conventionally serve a copy of the notice of appeal upon the defendant, either by personal service or by mail addressed to the defendant. Appellant shall note on each copy served the date on which the notice of appeal was filed. Failure of appellant to serve notice shall not affect the validity of the appeal, but may be cause for sanctions. Service shall be sufficient not-withstanding the death of a party or the party's counsel. The Clerk of the Supreme Court shall note in the docket the names of the parties to whom the appellant ~~mailed~~served copies, with the date of ~~mailing~~service as indicated on the certificate of service.

(e) **Payment of Fees.** Upon the filing of any separate or joint notice of appeal ~~from the Superior Court~~, the appellant shall pay to the Clerk of the Supreme Court such fees as are required and referenced in Rule 3.

(f) **Notice to Trial Judge; Opinion in Support of Order.** At the time of the filing of the notice of appeal, the appellant shall mail a copy thereof by ordinary mail to the trial judge. Within fifteen days thereafter, the trial judge may file and mail to the parties and the Clerk of the Supreme Court a written opinion or a written amplification of an earlier written or oral recorded ruling or opinion. Failure to give notice of the appeal to the trial judge shall not affect the jurisdiction of the Supreme Court.

(g) **Notice of Appeal in *Pro Se* Cases.** The Supreme Court and the Superior Court shall

deem a paper filed by a *pro se* litigant after the decision of the Superior Court in a civil or criminal case, or in a habeas corpus case, to be a notice of appeal despite informality in its form or title if it evidences an intention to appeal. The Supreme Court and the Superior Court shall deem an application for leave to appeal IFP or ~~an application for a certificate of probable cause~~ any other document expressing an intent to appeal to be a notice of appeal if no formal notice has been filed.

(h) **Questions Which May be Raised on Appeal.** Only questions fairly presented to the Superior Court may be presented for review; provided, however, that when the interests of justice so require, the Supreme Court may consider and determine any question not so presented.

Rule 5. Appeal as of Right - When Taken.

(a) **Appeals in Civil Cases.**

(1) In a civil case in which an appeal is permitted by law as of right from the Superior Court to the Supreme Court, the notice of appeal required by Rule 4 shall be filed with the Clerk of the ~~Superior~~ Supreme Court within thirty days after the date of entry of the judgment or order appealed from; but if the Government of the Virgin Islands or the United States of America or an officer or agency thereof is a party, the notice of appeal may be filed by any party within sixty days after such entry. 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) To be appealable as of right, an order of the Superior Court must either be final or must be classified within the categories of interlocutory orders specified in 4 V.I.C. Sections 33(b) and (c).

(3) If one party timely files a notice of appeal, any other party may file a notice of appeal within fourteen days after the date on which the first notice of appeal was filed, or within the time otherwise prescribed by statute or by this Rule, whichever period last expires.

(4) If any party ~~makes~~timely files in the Superior Court a ~~timely~~ motion for judgment as a matter of law; to amend findings or make additional findings; for a new trial; to reconsider, alter or amend the judgment or order; or (if filed within twenty-eight days) for relief from the judgment or order,~~of a type specified immediately below~~ ~~within fourteen days after entry of judgment in the Superior Court or within fourteen days after leave has been granted pursuant to SUPER. CT. R. 65~~, the time for filing the notice of appeal ~~for all parties runs from~~ is extended until 30 days after ~~the~~ entry of ~~the~~ an order disposing of the last such motion; provided, that the failure to dispose of any motion by order entered upon the record within 90 days after the date the motion was filed shall constitute a denial of the motion for purposes of appeal. ~~outstanding.This provision applies to a motion:~~

~~(i) for judgment under FED. R. CIV. P. 50(b)~~;

~~(ii) to amend or make additional findings of fact under FED. R. CIV. P. 52(b), whether or not granting the motion would alter the judgment;~~

~~(iii) to alter or amend the judgment under SUPER. CT. R. 50;~~

~~(iv) for a new trial under SUPER. CT. R. 50;~~

~~(v) for a new trial under SUPER. CT. R. 65; or~~

~~(vi) for relief under FED. R. CIV. P. 60 if the motion is filed within fourteen days after the entry of judgment.~~

A notice of appeal filed after announcement or entry of the judgment but before

disposition of any of the above motions is ineffective to appeal from the judgment or order, or part thereof, specified in the notice of appeal, until the date of the entry of the order disposing of the last such motion outstanding or 90 days after the date the last such motion was filed. Appellate review of an order disposing of any of the above motions requires the party, in compliance with Rule 4(c), to amend a previously filed notice of appeal. A party intending to challenge an alteration or amendment of the judgment shall file with the Clerk of the ~~Superior~~Supreme Court a notice or an amended notice of appeal within the time prescribed by this Rule 5, measured from the entry of the order disposing of the last such motion outstanding. ~~The party shall simultaneously file with the Supreme Court a copy of the notice or amended notice of appeal, attaching a copy of the final order or judgment.~~ No additional fees will be required for filing an amended notice. A motion for attorney's fees shall not affect the running of the time for appeal.

(5) The Superior Court shall have authority to consider and deny any motion ~~filed for relief under FED. R. CIV. P. 60,~~ for relief from a judgment or order that is filed more than ~~fourteen~~twenty-eight days after the final judgment or order is entered. If the Superior Court would otherwise be disposed to grant such a motion ~~that is filed more than fourteen days after entry of judgment or order~~, it shall so notify the Supreme Court and request that the entire matter be remanded to the Superior Court for further action. The Supreme Court shall grant such request in its discretion, taking into consideration the interests of judicial efficiency and the possibility of abuse. The Superior Court shall, if a notice of appeal has been filed, have no authority to grant motions specified in Rule 5(a)(4)~~(i)-(vi) filed more than fourteen days after the entry of judgment or order, or filed more than fourteen days after leave has been granted pursuant to SUPER. CT. R. 65~~that have either been untimely filed or have been deemed denied due to the expiration of the ninety day period provided, but may notify the Supreme Court of its intent to grant such a motion. ~~nor shall t~~The untimely filing of such motions shall not affect the time for appeal or the jurisdiction of the Supreme Court over the appeal.

(6) The appellant shall promptly file in the Supreme Court notice of the filing or pendency of any motion in the ~~lower~~Superior ~~c~~Court and, in addition, shall file the Superior Court's resolution no later than fourteen days after the trial court disposes of the motion. If the Superior Court fails to rule on a timely filed motion authorized by Rule 5(a)(4) within ninety days, the appellant shall notify the Supreme Court of this fact in the notice of appeal or, if a notice of appeal had previously been filed, no later than fourteen days after the expiration of the ninety-day period. It is the responsibility of the appellant to keep the Supreme Court apprised of any change in the status of any action that may affect the appeal. Failure to follow this Rule may result in sanctions.

(7) The Clerk of the Superior Court shall transmit to the Clerk of the Supreme Court copies of any motions filed or orders entered in the Superior Court after the notice of appeal is filed.

(8) The Superior Court, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal upon motion filed not later than thirty days after the expiration of the time prescribed by this Rule 5(a); provided, however, that the Supreme Court may, *sua sponte* or on motion, take any appropriate action, including, but not limited to, making the excusable neglect or good cause determination and ruling on the motion in the first instance, if the Superior Court fails to act on the extension request within 60 days. Any such motion must be served upon the remaining parties. Notice of appeal or any motion for extension of time which is filed after expiration of the prescribed time shall be given to the other parties in

accordance with the rules of the Supreme Court or the Superior Court, as the case may be. No such extension shall exceed thirty days past such prescribed time or fourteen days from the date of entry of the order granting the motion, whichever occurs later.

(9) A judgment or order is entered within the meaning of this Rule when it is entered in the docket in compliance with Superior Court Rule 49~~, and to the extent that it is not inconsistent with Rules 58 and 79(a) of the Federal Rules of Civil Procedure~~. Failure of the Superior Court to enter a separate document representing the judgment and/or order shall not toll the time for appeal. The time for appeal begins upon the entry of the final order into the docket.

(10) The ~~Supreme~~Superior Court, if it finds (a) that a party entitled to notice of the entry of a judgment or order did not receive such notice from the Clerk of the Superior Court or any party ~~within twenty-one days of its entry~~ and (b) that no party would be substantially prejudiced, may, upon motion filed within ninety days of entry of the judgment or order or within ~~ten~~fourteen days of receipt of such notice, whichever is earlier, reopen the time for appeal for a period of fourteen days from the date of entry of the order reopening the time for appeal, provided, however, that the Supreme Court may, *sua sponte* or on motion, take any appropriate action, including, but not limited to, making the determination and ruling on the motion in the first instance, if the Superior Court fails to act on the request to reopen within 60 days. This Rule shall not be construed as excusing the parties from their affirmative responsibility to regularly monitor the status of their case in the Superior Court.

(11) If a notice of appeal is mistakenly filed in the ~~Supreme~~Superior Court, the Clerk of the ~~Supreme~~Superior Court shall note thereon the date when the Clerk received the notice and transmit it to the Clerk of the ~~Superior~~Supreme Court and it shall be deemed filed in the ~~Superior~~Supreme Court on the date so noted by the Clerk of the ~~Supreme~~Superior Court.

(b) **Appeals in Criminal Cases.**

(1) In a criminal case, a defendant shall file the notice of appeal in the ~~Superior~~ Supreme Court within ~~fourteen~~thirty days after the entry of (i) the judgment or order appealed from or (ii) a notice of appeal by the Government. A notice of appeal filed after the announcement of a decision, sentence, 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) If any party timely files a motion for judgment of acquittal or for a new trial (on a ground other than newly discovered evidence)~~within days after entry of judgment in the Superior Court~~, the time for filing the notice of appeal for all parties ~~runs from the~~ is extended until 30 days after entry of the order disposing of the last such motion outstanding; to toll the time to file a notice of appeal, a motion for a new trial based on newly discovered evidence must be filed within thirty days of the date of the date of the final judgment or order.~~If a defendant makes a timely motion specified immediately below, an appeal from a judgment of conviction must be taken within fourteen days after the entry of the order disposing of the last such motion outstanding, or within fourteen~~thirty~~ days after the entry of the judgment of conviction, whichever is later. This provision applies to a timely motion:~~

~~(i) for judgment of acquittal pursuant to FED. R. CRIM. P. 29, if that rule is applicable to the Superior Court;~~

~~(ii) for arrest of judgment pursuant to FED. R. CRIM. P. 34, if that rule is applicable to the Superior Court;~~

~~(iii) for a new trial on any ground other than newly discovered evidence pursuant to SUPER. CT. R. 135; or~~

~~(iv) for a new trial based on the ground of newly discovered evidence, pursuant to~~

~~SUPER. CT. R. 135, if the motion is filed before or within fourteen days after the entry of the judgment. If an appeal is already pending at the time a motion for new trial based on the ground of newly discovered evidence is filed, the Superior Court may grant the motion only on remand of the case.~~

A notice of appeal filed after the Superior Court announces a decision, sentence, or order but before it disposes of any of the above motions, if the motion was timely filed, is ineffective until the date of the entry of the order disposing of the last such timely filed motion outstanding, or until the date of the entry of the judgment of conviction, whichever is later. Notwithstanding the provisions of Rule 4(c), a valid notice of appeal is effective without amendment to appeal from an order disposing of any of the above motions.

When an appeal by the Government is authorized by statute (as under 4 V.I.C. Section 33(d)), the notice of appeal shall be filed in the ~~Superior~~ Supreme Court within thirty days after (i) the entry of the judgment or order appealed from or (ii) the filing of a notice of appeal by any defendant.

(~~2~~3) The filing of a notice of appeal under this Rule 5(b) does not divest the Superior Court of jurisdiction to correct a sentence ~~under SUPER. CT. R. 112, 136, or 137, or under the Federal Rules of Criminal Procedure (to the extent that the Federal Rules of Criminal Procedure apply in the Superior Court)~~; nor does the filing of such a motion affect the validity of a notice of appeal filed before entry of the order disposing of the motion.

The Superior Court shall have authority to consider and deny any motion for a new trial based on the ground of newly discovered evidence~~, pursuant to SUPER. CT. R. 135,~~ that is filed more than fourteen days after the final judgment or order is entered. If the Superior Court would otherwise be disposed to grant such a motion that is filed more than fourteen days after entry of judgment or order, it shall so notify the Supreme Court and request that the entire matter be remanded to the Superior Court for further action. The Supreme Court shall grant such request in its discretion, taking into consideration the interests of judicial efficiency and the possibility of abuse. The Superior Court shall have no authority to grant motions specified in Rule 5(b)(2)~~(1)(i)-(ii) filed more than ten days after the entry of judgment or order,~~ that have been untimely filed, but may notify the Supreme Court of its intent to grant such a motion. ~~nor shall t~~The untimely filing of such motions shall not affect the time for appeal or the jurisdiction of the Supreme Court over the appeal.

(~~3~~4) The appellant shall promptly file in the Supreme Court notice of the filing or pendency of any motion in the lower court and, in addition, shall file the Superior Court's resolution no later than fourteen days after the trial court disposes of the motion. It is the responsibility of the appellant to keep the Supreme Court apprised of any change in the status of any action that may affect the appeal. Failure to follow this Rule may result in sanctions.

(~~4~~5) The Clerk of the Superior Court shall transmit to the Clerk of the Supreme Court copies of any motions filed or orders entered in the Superior Court action after the notice of appeal is filed.

(~~5~~6) A judgment or order is entered within the meaning of this subdivision when it is entered on the criminal docket. Upon a showing of excusable neglect or good cause, the Superior Court may -- before or after the time has expired, with or without motion and notice -- extend the time for filing a notice of appeal for a period not to exceed thirty days from the expiration of the time otherwise prescribed by this subdivision; provided, however, that the Supreme Court may, *sua sponte* or on motion, take any appropriate action, including, but not limited to, making the excusable neglect or good cause determination and ruling on the motion in the first instance, if

the Superior Court fails to act on the extension request within 60 days. Notice of appeal or any motion for extension of time which is filed after expiration of the prescribed time shall be served on the other parties in accordance with the rules of the Supreme Court or the Superior Court, as the case may be.

(~~6~~7) If a notice of appeal is mistakenly filed in the ~~Supreme~~Superior Court, the Clerk of the ~~Supreme~~Superior Court shall note thereon the date on which it was received and electronically transmit it to the Clerk of the ~~Superior~~Supreme Court, and it shall be deemed filed in the ~~Superior~~Supreme Court on the date so filed in the ~~Supreme~~Superior Court.

(c) **Appeal by an Inmate Confined in an Institution.** If an inmate confined in an institution outside the ~~Superior~~ boundaries of the Virgin Islands files a notice of appeal, in either a civil or criminal case, of a Superior Court judgment or appealable order in a civil or criminal case, the notice is timely filed if it is deposited in the institution's internal mail system on or before the last day for filing. Timely filing may be shown by a notarized statement by the Warden or individual in charge of the institution setting forth the date of deposit and stating that first-class postage has been prepaid. All other documentation indicating proof of deposit and mailing shall accompany the motion to deem filed.

(d) **Appeals in Juvenile Matters.** Appeals in juvenile matters to the Supreme Court from the Superior Court may be taken as a matter of right. The time to appeal and related procedures are governed by Rule 5(b), *Appeals in Criminal Cases*, and requests for a stay of a judgment or order of the Superior Court shall be governed by Rule 8(b). In all appeals contesting transfer of juveniles pursuant to 5 V.I.C. §§ 2508 and 2509, appellant shall move for expedited review under Rule 5(e).

(e) **Expedited Appeals.** A party who seeks an expedited appeal shall, within fourteen days of the notice of appeal, file with the Supreme Court a motion setting forth the exceptional reason that warrants expedition. Opposition, if any, to expedited treatment shall be filed within ten days thereafter unless otherwise directed by the Court.

(f) **Case Caption.** The case caption should list the appellant(s) v. appellee(s), in that order. Reference should also be made to parties' titles in the lower court action. Nominal appellees should be identified below the initial caption with their lower court titles. Juvenile appellants or appellees should be identified only by their initials.

Rule 6. Appeals by Permission.

(a) **Petition for Permission to Appeal**. An appeal from an order in a civil action, under 4 V.I.C. Section 33 (c), containing the statement by a Superior Court judge that such order involves a controlling question of law about which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation; may be sought by filing a petition for permission to appeal with the Clerk ~~of the Court~~ of the Supreme Court within ~~fourteen~~ten days after the entry of such order in the Superior Court with proof of service on all other parties to the action in the lower court. An order as defined in this paragraph may be amended at any time to include the prescribed statement, and permission to appeal may be sought within fourteen days after entry of the order as amended.

(b) **Motion for Expedited Review.** In all interlocutory appeals, appellant shall move for expedited review under Rule 5(e). Failure to so request may result in sanctions upon the attorney or party.

(c) **Content of Petition; Answer**. The petition shall not exceed ten pages in length. The petition shall include or have annexed thereto a copy of the order from which appeal is sought and of any findings of fact, conclusions of law, and opinion relating thereto. Petitions for appeals from an order pursuant to paragraph (a)(iii) also shall contain a statement of the facts necessary to understand the controlling question of law determined by the order of the Superior Court; a concise statement of the issue(s) to be presented; and a statement of the reasons why a substantial basis exists for a difference of opinion on the question and why an immediate appeal may materially advance the termination of the litigation.

Within ten days after service of the petition, an adverse party may file an answer in opposition not more than five pages in length. The application and answer shall be submitted without oral argument unless otherwise ordered.

(d) **Number of Copies**. Pursuant to Rule 40.3(h), no paper copies of electronically filed petitions need be filed with the Court. If a party is exempt from electronic filing, or if electronic filing has been disallowed, ~~A~~an original and three copies of the petition for permission to appeal pursuant to this Rule must be conventionally filed unless otherwise ordered by this Court.

(e) **Grant of Permission; Cost Bond**. Within fourteen days after the entry of an order granting permission to appeal, the appellant shall (1) pay to the Clerk of the Supreme Court such fees as are required and referenced in Rule 3, and (2) file a bond for costs if required by th~~is~~e Supreme Court. The Clerk of the Supreme Court shall notify the Clerk of the Superior Court forthwith if such permission to appeal is granted. Upon receipt of such notice, the Clerk of the Superior Court shall ~~enter the appeal upon the docket~~ notify the Superior Court judge that permission to appeal was granted and transmit the record to the Clerk of the Supreme Court in accordance with Rules 10 and 11. The petition shall be construed as notice of appeal.

Rule 7. Appellate Mediation and Conciliation.

(a) **How Initiated**. Civil appeals to the Supreme Court may be referred to a mediator to meet with counsel and parties to facilitate settlement of the case, simplify issues, or otherwise assist in the expeditious handling of an appeal.

(b) **Attendance at Sessions.** Mediation sessions must be attended by each party, or another person with actual authority to settle the case, and their counsel. Failure of counsel to attend sessions may result in the imposition of sanctions, including dismissal of the appeal. Counsel is not required for parties appearing *pro se*.

(c) **Clerk as Administrator; Case Selection.** The Clerk of the Supreme Court shall serve as the program administrator of the Appellate Mediation Program. A party may request mediation, but the Chief Justice will determine which cases are appropriate for mediation. Case selection will usually take place approximately thirty days after a case has been docketed for appeal. Counsel of record will receive notice of case selection and of the mediator assigned. An initial mediation session will be scheduled by the mediator within thirty days of a case's selection for mediation, with additional sessions to be scheduled as needed.

(d) **Submission and Service of Papers**. The Clerk will provide the mediator with a copy of the judgment, opinion, and/or order on appeal, the appeal information statement, the appellant's statement of issues on appeal, and all relevant motions. Upon request of the mediator, counsel shall prepare and submit to the mediator a position paper of no more than ten pages (double spaced), stating their parties' views on the key facts and legal issues in the case. The position paper will include a statement of motions filed and their status. All motions filed or

decided while mediation is underway are to be identified for the mediator and submitted to her or him upon request. Copies of documents submitted to the mediator should be served upon opposing counsel unless the mediator excuses such service. Documents prepared for mediation sessions are not to be filed with the Clerk except as noted below.

(e) **Argument Schedule; Motion to Postpone**. All cases in mediation remain subject to normal scheduling for briefing and oral argument. If it is the mediator's view that additional mediation sessions are required and that such sessions would affect the briefing schedule in the case, counsel shall request an extension by filing a joint motion to defer or postpone the briefing, oral argument, and/or consideration date(s). Counsel shall represent that the mediator concurs in the request.

(f) **Privileged Discussions**. The content of mediation discussions and proceedings, including any statement made or document prepared by any party, attorney, or other participant, is privileged and shall not be disclosed to the Supreme Court or construed for any purpose as an admission against interest. To that end, the parties shall not file any motions or other document that would disclose any information about the content of a mediation, whether or not it has been concluded. This means that parties are prohibited from using any information obtained as a result of the mediation process as a basis for any motion other than a motion affecting the briefing or argument schedule.

(g) **Mediation Not Binding**. No party shall be bound by anything said or done at a mediation session unless a settlement is reached. If a settlement is reached, the agreement shall be reduced to writing and shall be binding upon all parties to the agreement.

(h) **Costs**. Mediators shall be compensated by the parties. The Court may determine the reasonableness of the fees charged by the mediator. In the absence of a written agreement providing for the mediator's compensation, the mediator shall be compensated at the hourly rate set by the Court in the order referring the matter to mediation. Each party shall pay one-half or such other proportionate share of the total charges of the mediators as may be agreed upon, unless the mediator and/or the Court determines that one party has not mediated in good faith.

(i) **Selection of Mediator.** Mediators for the Supreme Court will be selected by the Court from those qualified ~~under either the Supreme Court of the Virgin Islands Rules of Civil Procedure as adopted, and/or Superior Court Rule 40(a)(3)~~by either the Supreme Court or the Superior Court.

(j) **Settlement.** If a case is settled, the mediator or counsel shall file a stipulation of dismissal. Such stipulation must be filed within fifteen days after the settlement is reached unless a short extension is requested by counsel by motion. If a case cannot be resolved through mediation, the parties shall so inform the Court within ten days after the last mediation session, and the matter will remain on the docket and proceed as if mediation had not been initiated.

Rule 8. Bond and Stay or Injunction Pending Appeal in Civil Case; Release Pending Appeal in Criminal Case.

(a) **Bond or Other Security in Civil Case.** The Superior Court may require an appellant in a civil case to file a bond or provide other security in such form and amount as it finds necessary to ensure payment of costs on appeal, including attorney's fees, pursuant to the applicable Rules of the Superior Court. In the event the Superior Court chooses to require a cost bond, the Clerk of the Superior Court shall immediately notify the Clerk of the Supreme Court that a bond requirement has been set and when the bond has been paid.

(b) **Requests for a Stay of Judgment or Order of Superior Court in Civil Case.** Requests for a stay of the judgment or order of the Superior Court pending appeal, for approval of a supersedeas bond, or for an order suspending, modifying, restoring, or granting an injunction during the pendency of an appeal in a civil case must ordinarily be made in the first instance to the Superior Court. When a matter is before the Superior Court, its rules respecting time periods, practices, and procedures apply. A motion for such relief may be made to the Supreme Court, but the motion shall show that application to the Superior Court for the relief sought is not practicable, or that the Superior Court has denied an application, or has failed to afford the relief which the applicant requested, with the reasons given by the Superior Court for its action. The motion shall also show the reasons for the relief requested and the facts relied upon, and, if the facts are subject to dispute, the motion shall be supported by affidavits, other sworn statements or copies thereof, and documentation demonstrating ownership, liens or other encumbrances, and availability of resources offered as security. With the motion shall be filed such parts of the record as are relevant. An original and three copies of the motion and any accompanying documents shall be filed with the Supreme Court. Reasonable notice of the motion shall be given to all parties. The motion shall be filed with the Clerk of the Supreme Court and normally will be considered by a three judge panel, but in exceptional cases where such procedure would be impracticable due to the requirements of time, the application will be decided by the Chief Justice of the Supreme Court.

(c) **Conditioning Stay upon Giving of Bond in Civil Case.** Relief available in the Supreme Court under this Rule may be conditioned upon the filing of a bond or other appropriate security in the Superior Court. If security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the Superior Court and irrevocably appoints the Clerk of the Superior Court as the surety's agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. A surety's liability may be enforced on motion in the Superior Court without the necessity of an independent action. The motion and such notice of the motion as the Superior Court prescribes may be served on the Clerk of the Superior Court who shall forthwith mail copies to the sureties if their addresses are known.

(d) **Motions for Release Pending Appeal in Criminal Case.** Motions for release pending appeal in a criminal case must ordinarily be presented in the first instance to the Superior Court. If the Superior Court refuses release pending appeal, or imposes conditions of release, the judge shall state in writing the reasons for the action taken. If a hearing occurred in the Superior Court addressing the issue of release, four copies of the transcript shall be filed with the Supreme Court. Earlier-imposed conditions shall be documented in the motion for release, and the conditions, rules, and documentation referenced in the preceding paragraph 8(c) apply as well. After reasonable notice to the non-movant, the motion shall be determined promptly upon such papers, affidavits, and portions of the record as the parties shall present or as the Supreme Court may require. The motion normally will be considered by a three judge panel, but in exceptional cases where such procedure would be impracticable due to the requirements of time, the application may be decided by the Chief Justice of the Supreme Court, who may order the release of the appellant pending disposition of the motion.

The decision regarding release must be made in accordance with Virgin Islands law, including 4 V.I.C. Section 33(d)(4), as it may be supplemented by ~~the provisions of Rule 38 of the Federal Rules of Criminal Procedure~~court rule. The movant has the burden of establishing that the defendant will not flee or pose a danger to any other person or to the community, that the

appeal was not filed for delay, and that it raises a substantial question of law or fact likely to result in reversal or in an order for a new trial.

Rule 9. Pretrial Release in a Criminal Case.

(a) **Order of the Superior Court.** The Superior Court shall state in writing, or orally on the record, the reasons for an order refusing or imposing conditions of release or ordering pretrial detention of a defendant in a criminal case. A party appealing from the order, as soon as practicable after filing a notice of appeal with the ~~Superior~~Supreme Court, must file in the Supreme Court a copy of the Superior Court's order and its statement of reasons. An appellant who questions the factual basis for the Superior Court's order must timely move for expedited review under Rule 5(d) and must file a transcript of any release proceedings in the Superior Court or an explanation why a transcript has not been obtained. The appeal shall be heard, after reasonable notice to the appellee, upon such papers, affidavits, and portions of the record as the parties present or the Supreme Court may require. Briefs need not be filed unless the Supreme Court so orders.

(b) **Duties of the Clerk of the Superior Court.** The Clerk of the Superior Court shall transmit a list of docket entries within fifteen days after receiving, from the Clerk of the Supreme Court, notice of the filing of the appeal from the order refusing or imposing condition of release or ordering detention, and shall in addition inform the Supreme Court of any order or judgment entered subsequent to the forwarding of such list. The appeal normally will be considered by a three ~~judge~~justice panel, but in exceptional cases where such procedure would be impracticable due to the requirements of time, it may be decided by the Chief Justice of the Supreme Court, who may order the release of the appellant pending disposition of the motion.

All decisions regarding release must be made in accordance with the United States Constitution, the Revised Organic Act of 1954, and Virgin Islands law.

Rule 10.The Record on Appeal.

(a) **Composition of the Record on Appeal.** The original papers and exhibits filed in the Superior Court, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the Clerk of the Superior Court shall constitute the record on appeal in all cases. The Clerk of the Superior Court shall forward to the Supreme Court a certified copy of docket entries~~, the notice of appeal,~~ and a copy of the order or judgment being appealed upon receipt of a copy of the notice of appeal from the Clerk of the Supreme Court. The original complete record should only be transmitted upon request by the Supreme Court.

(b) **The Transcript of Proceedings; Duty of Appellant to Order; Notice to Appellee if Partial Transcript Is Ordered.**

(1) If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion. Within fourteen days after filing the notice of appeal (or entry of the order disposing of the type of timely motion specified in Rule 5(a)(4) or 5(b)(1)), the appellant shall order from the reporter a transcript of such parts of the proceedings not already on file as the appellant deems necessary.

Orders for transcripts and/or a certificate that a particular reporter's transcript is not necessary shall be presented on the Transcript Purchase Order ["TPO"] form provided by the

Clerk of the ~~Superior~~Supreme Court and shall include the name of the reporter. No other form may be used. ~~A separate~~ A single TPO form shall be submitted ~~for each~~regardless of the number of reporters who participated in the proceeding being appealed. The TPO form shall specify which transcripts ~~is~~are being requested and which ~~is~~are not necessary, where a reporter recorded the proceeding on more than one day and one or more of those transcripts is not needed for appeal. Any unnecessary expense resulting from an ambiguous request will be the financial responsibility of the party making such request. ~~One copy of the form shall be served on each individual reporter from whom a transcript is ordered; the second copy shall be filed with the Clerk of the Supreme Court; the third copy shall be served on the appellee; and the fourth copy shall be filed with the Clerk of the Superior Court.~~ Unless a party or attorney is exempt from electronic filing or the Supreme Court has disallowed e-filing in a particular case pursuant to Rule 40.2, the TPO form must be e-filed with the Supreme Court and served on the other parties to the action, the reporter(s), and the Clerk of the Superior Court in accordance with Rule 40.3.

(2) Unless the entire transcript is to be included, the appellant shall, within fourteen days of filing the notice of appeal (or entry of the order disposing of the type of timely motion specified in Rule 5(a)(4) or 5(b)(1)), file a statement of the issues the appellant intends to present on the appeal and shall serve on the appellee a copy of the completed TPO. If the appellee deems additional transcript(s) or other parts of the proceedings to be necessary, the appellee shall, within fourteen days after the service of the completed TPO form, file and serve on the appellant a designation of additional parts of the record to be included. Unless the appellant has ordered such parts within fourteen days after service of such designation, and has so notified the appellee, the appellee may, within the following fourteen days, either order the parts or file a motion in the Supreme Court for an order requiring the appellant to do so. If additional transcripts are needed, appellee shall file and serve a completed TPO form as indicated in subsection (1) of this Rule.

(3) At the time the ~~TPO~~transcript is ordered, a party must make satisfactory arrangements with the reporter for payment of the cost of the transcript.

(c) **Statement of the Evidence or Proceedings When No Report Was Made or When the Transcript Is Unavailable.** If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement shall be served on the appellee within fourteen days of filing the notice of appeal (or entry of the order disposing of the type of timely motion specified in Rule 5(a)(4)), and the appellee may serve objections or proposed amendments thereto within fourteen days after service. If the parties are not able to resolve any differences in the statement of the evidence or proceedings, the Supreme Court may refer the statement and any objections or proposed amendments to the Superior Court for settlement of the differences and approval, and the statement, as settled and approved, shall be returned to the Clerk of the Supreme Court as the record on appeal.

(d) **Agreed Statement of Facts on Appeal**. In lieu of the record on appeal as defined in subdivision (a) of this Rule, the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the Superior Court and setting forth only so many facts averred and proved or sought to be proved as are essential to a decision of the issues presented.

(e) **Correction or Modification of the Record.** If any difference arises over whether the record truly discloses what occurred in the Superior Court, the difference shall be submitted to

and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the Supreme Court, on proper suggestion or of its own initiative, or the Superior Court, either before or after the record is transmitted to the Supreme Court, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted. All other questions about the form and content of the record shall be presented for decision to the Supreme Court.

Rule 11. Transmission of the Record on Appeal.

(a) **Duty of Appellant.** After filing the notice of appeal, the appellant, or in the event that more than one appeal is taken, each appellant, shall comply with the provisions of Rule 11(b) and shall take any other action necessary to enable the Clerk of the Superior Court to assemble and transmit the record to the Supreme Court. A single record shall be transmitted.

(b) **Duty of Court Reporter to Coordinate Prepareation and Fileing of Transcript; Notice to Supreme Court; Duty of Clerk to Transmit Certified Copy of the Docket Entries in Lieu of Record; Retention of Record in Superior Court**. Upon receipt of an order for a transcript, the court reporter shall acknowledge in Part II of the TPO the fact that the court reporter has received it, the estimated number of pages, and the date on which the court reporter expects to have the transcript completed.~~, and~~ The court reporter shall ~~transmit~~ e-file the TPO form, so endorsed, to the Supreme Court and file a copy with the Clerk of the Superior Court. If the court reporter cannot complete the transcript within ~~ninety~~forty-five days of receipt of the TPO Part I, the court reporter shall request an extension of time from the Clerk of the Supreme Court and the action of the Clerk of the Supreme Court shall be entered on the docket and the parties notified. In the event of the failure of the reporter to file the transcript within the time allowed, the Clerk of the Supreme Court shall notify the Chief Justice for such action as is appropriate. Upon completion of the transcript, the court reporter shall file ~~it~~ physical and electronic copies of the transcript with the Clerk of the Superior Court and shall notify the Clerk of the Supreme Court that the reporter has done so by completing Part III of the TPO~~ and filing it with the Supreme Court~~ in accordance with Rule 40.3(k). The record shall be complete when all ordered transcripts have been filed with the Clerk of the Superior Court.

When the record is complete for purposes of the appeal, the Clerk of the Superior Court shall electronically transmit the record as an e-record in accordance with Rule 40.3(j).~~a certified copy of the updated list of docket entries in lieu of the entire record, listing all the documents filed in the Superior Court action in chronological order, indicating the date of signature by the Superior Court judge and the date that the order was entered by the Clerk of the Superior Court, and identifying each document with reasonable definiteness~~. The original file shall not be transmitted by the Superior Court Clerk unless during the pendency of the appeal the Clerk of the Supreme Court directs that designated parts of the record be transmitted.

(c) **Transmission of Record to Supreme Court.** Notwithstanding the provisions of (a) and (b) of this Rule 11, the Supreme Court may request electronic or physical transmission of part or all of the record by the Clerk of the Superior Court in order to address a motion or the issues on appeal. Upon resolution of the motion or appeal, the Clerk of the Supreme Court shall return any portion of the physical record to the Superior Court that was transmitted pursuant to this Rule 11(c).

(d) **Partial Record with Motions.** If a party desires to move in the Supreme Court for

dismissal, for release, for a stay pending appeal, for additional security on the bond on appeal or on a supersedeas bond, or for any intermediate order, the movant shall provide copies of all relevant Superior Court entries at the time the motion is filed, any relevant judgment, decision, or order of the Superior Court, and any accompanying memorandum or opinion, and any other part of the original record as the Supreme Court shall designate.

Rule 12. Docketing of the Appeal~~; Filing a Representation Statement~~.

~~(a) **Docketing.**~~ Upon ~~receipt~~filing of ~~the copy of~~ a ~~the~~ notice of appeal, ~~filed by the appellant pursuant to Rule 4(d)~~, petition for writ, or other initiating document, the Clerk of the Supreme Court thereupon shall enter the ~~appeal~~case upon the docket ~~in conformance with Rule 5(e)~~ and shall so notify all parties to the lower court action.

~~(b) **Statement of Representation.** Within fourteen days after filing a notice of appeal, unless another time is designated by the Supreme Court, the attorney who filed the notice of appeal shall file with the Clerk of the Supreme Court an appeal information statement, naming each party represented on appeal by that attorney, the judgment, order, or part thereof appealed from and the reason(s) or issue(s) to be presented on appeal. The appeal information statement form will be provided by the Clerk of the Supreme Court.~~

Rule 13. Writs of Mandamus and Prohibition Directed to ~~a~~ Judges or Non-Judges and Other Extraordinary Writs.

(a) **Mandamus or Prohibition to a Judge or Non-Judges; Petition for Writ; Service and Filing.** Application for a writ of mandamus or of prohibition directed to a judge or judges of the Superior Court shall be made by filing a petition therefor with the Clerk of the Supreme Court with proof of service on the respondent judge, on all parties to the action in the Superior Court, and on the Clerk of the Superior Court. Upon receipt of a copy of the petition, the Clerk of the Superior Court shall forthwith transmit to the Clerk of the Supreme Court a list of docket entries and inform the Supreme Court of any subsequently-entered orders. If directed to a non-judge, the petition need only be served on the non-judge. The petition shall be titled "In re [name of petitioner]." The petition shall contain a statement of the facts necessary to understand the issues presented by the application; a statement of the issues presented and of the relief sought; a statement of the reasons why the writ should issue; ~~and~~ copies of any order or opinion or parts of the record which may be essential to understand the matters set forth in the petition; and shall include an address where notices and papers may be mailed or served upon counsel or, if proceeding *pro se*, the petitioner. Upon receipt of the prescribed docket fee, the Clerk of the Supreme Court shall docket the petition and submit it to the Chief Justice for assignment and disposition by the Supreme Court.

(b) **Denial; Order Directing Answer.** If the panel of the Supreme Court is of the opinion that the writ should not be granted, it shall deny the petition. Otherwise, it shall order that an answer to the petition be filed by the respondents within the time fixed by the order. The order shall be served by the Clerk of the Supreme Court on the judge named respondent and on all other parties to the action in the Superior Court. All parties below (other than petitioner) shall be deemed respondents for all purposes, with the judge being denominated as nominal respondent. If the judge named as nominal respondent does not desire to appear in the proceeding, the judge may so advise the Clerk of the Supreme Court and all parties by letter, but the petition shall not

thereby be taken as admitted. The Clerk shall advise the parties of the dates on which briefs, if required, are to be filed and of the date, if any, of oral argument. The proceeding shall be given preference over ordinary civil cases.

(c) **Other Extraordinary Writs.** Application for extraordinary writs other than those provided for in subdivisions (a) and (b) of this Rule 13 shall be made by petition filed with the Clerk of the Supreme Court with proof of service on the parties named as respondents. Proceedings on such application shall conform, so far as is practicable, to the procedure prescribed in subdivisions (a) and (b) of this Rule.

(d) **Number of Copies.** Pursuant to Rule 40.3(h), no paper copies of electronically filed petitions need be filed with the Court. If a party is exempt from electronic filing, or if electronic filing has been disallowed, ~~S~~seven paper copies of petitions filed pursuant to paragraph (a) or (c) of this Rule and any answer, if ordered, shall be filed. The Court by order may direct that additional copies be furnished.

Rule 14.Habeas Corpus Proceedings.

(a) **Application for the Original Writ.** All applications for a writ of habeas corpus pursuant to 4 V.I.C. § 31(b)(2) must be accompanied with a statement explaining why the application has not and cannot be made to the Superior Court in the first instance. If the petitioner fails to include such a statement, or if the reasons given in the statement are insufficient to establish that relief cannot be obtained from the Superior Court or other appropriate forum, the Chief Justice or the panel may dismiss the petition without prejudice to its re-filing in the Superior Court. If the panel determines that the petitioner has met his burden of establishing that exceptional circumstances warrant this Court entertaining an application for writ of habeas corpus in the first instance, proceedings on such application shall conform, as far as is practicable, to the procedure prescribed in subdivisions (a) and (b) of Rule 13.

(b) **Appeals as of Right from Superior Court.** Notwithstanding the provisions of subdivision (a) of this Rule, a final order of the Superior Court denying an application for writ of habeas corpus brought pursuant to chapter 91 of title 5 of the Virgin Islands Code may be appealed to the Supreme Court as of right pursuant to 4 V.I.C. § 32(a) and Supreme Court Rule 5(a).

Rule 15. Format for Papers, Motions, and Briefs; Filing and Service.

(a) **Format, Caption, and Footnotes.** The use of both sides of a sheet of paper is encouraged. All printed matter must appear in at least twelve point type on opaque, unglazed paper. All papers and motions shall be firmly bound at the left margin in a secure manner that does not obscure the text, and that permits the document to lie reasonably flat when open. All staples or fasteners shall be covered, and must have smooth edges. Use of backbones or spines without stapling or fastening is prohibited. All papers and motions shall have margins on both sides of each page that are no less than one inch wide, and margins on the top and bottom of each page that are no less than three-quarters of an inch wide. All papers and motions shall consist of pages not exceeding eight and one half by eleven inches in size, with double spacing between each line of text. Copies may be used for filing and service if they are legible, except that an original signature shall be required by the movant on at least one copy of each document.

A motion or other paper addressed to the Supreme Court, the title of the case, the docket

number, reference to the Superior Court docket number and the judicial division of St. Thomas/St. John or St. Croix, and a descriptive title indicating the purpose of the paper. The covers of all papers and motions shall contain the name(s), address(es), phone number(s), and facsimile number(s) of counsel for the party or parties on whose behalf the paper is submitted, or, if the party is proceeding *pro se*, the name, address, phone number(s), and facsimile number(s) of the party; and the names of counsel for opposing parties.

The cover of the brief of the appellant shall be blue; that of the appellee, red; that of an intervenor or amicus curiae, green; and that of any reply brief, gray. The cover of the appendix should be white. Where a transparent cover is utilized, the underlying cover sheet of the brief or appendix must nevertheless conform to the color requirements. The front covers of the briefs and appendices shall contain: (1) the number of the case; (2) the title of the case (*see* Rule 5(e)); (3) the judicial division and docket number of the Superior Court action below; (4) the title of the document (e.g., Brief for Appellant, Appendix); and (5) the names, addresses, phone number(s), and facsimile number(s) of counsel representing the party on whose behalf the document is filed. The briefs and appendices shall conform to Rules 22-25.

All appendices shall be separate from the briefs and no attachments shall be appended to the briefs. All documents included must be clearly legible. Copies of the reporter's transcript and other papers may be inserted in the appendix. All pages of the appendix shall be clearly and sequentially numbered.

Excessive footnotes in briefs and motions are discouraged. Footnotes shall be printed in no less than ten point type.

(b) **Filing.** Papers required or permitted to be filed in the Supreme Court shall be conventionally or electronically filed with the Clerk of the Supreme Court in accordance with Rules 15(f) and 40.3~~. Filing may be accomplished by mail addressed to the Clerk~~, but filing shall not be timely unless the papers are received by the Clerk within the time fixed for filing. It is the responsibility of the attorney or *pro se* party to correctly file all documents, including orders, TPOs, bond receipts, and notices of appearance. It is further the responsibility of the attorney or *pro se* party to bring all errors to the notice of the Supreme Court. Failure to file any accompanying documents that are required pursuant to any of these Rules may result in the filing being rejected before or after docketing, and/or may result in the issuance of sanctions against the party or against the attorney without further warning.

When a brief or motion includes a citation from another jurisdiction that is not available in the Supreme Court library, a copy of the case cited must be attached. All citations shall be according to the Uniform System of Citation. If a decision of the Supreme Court of the Virgin Islands is cited, the citation must indicate that it is a Supreme Court case. Failure to adequately cite may result in rejection of argument.

In accordance with ethical standards, any attorney who (1) appears to mislead the Court by providing law from another jurisdiction when this jurisdiction's law gives contrary analysis, or (2) does not present otherwise controlling contrary law, will be subject to such sanctions as the Court deems appropriate.

~~(c) **Service.** Copies of all papers filed by any party, at or before the time of filing, shall be served by a party or person acting for that party on all other parties to the appeal or review. Service on a party represented by counsel shall be made on counsel of the party, and receipt of service shall constitute service. Service by mail or by commercial carrier is complete on mailing or delivery to the carrier. Service by facsimile transmission is an acceptable method of service of process on the parties. When time does not permit actual service on other parties, or the moving~~

~~party has reason to believe that another party may not receive the motion in sufficient time to respond before the Court acts (as in certain emergency motions), the moving party should notify such other parties by telephone and facsimile of the filing of the motion.~~

~~Papers presented for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the person served, certified by the person who made service. The certificate of service must be attached to all filings, failing which the filing may be rejected. Papers may not be filed by facsimile without prior authorization by the Clerk. Authorization may be secured only in situations determined by the Clerk to be of an emergency nature or other compelling circumstance. In such instances, the original signed document must be filed promptly thereafter.~~

(c) **Required Redactions.** Parties, attorneys, or other persons filing any document, whether electronically or in paper, must refrain from including, or must partially redact where inclusion is necessary, the following personal data identifiers from all documents filed with the Supreme Court, including exhibits thereto, whether filed electronically or in paper, unless otherwise ordered by the Supreme Court:

(1) Social Security numbers. If an individual's Social Security number must be included, only the last four digits of that number should be used.

(2) Names of minor children and victims of sexual assault crimes. If the involvement of a minor child or a victim of a sexual assault crime must be mentioned, only the initials of that child or victim should be used.

(3) Dates of birth. If an individual's date of birth must be included, only the year should be used.

(4) Financial account numbers. If financial account numbers are relevant, only the last four digits of these numbers should be used.

(5) Home addresses. In criminal cases, if a home address must be included, only the city or island and the state or territory should be listed.

A party wishing to file a document containing the personal data identifiers listed above may:

(1) File an un-redacted version of the document under seal; or

(2) File a reference list under seal. The reference list must contain the complete personal data identifier(s) and the redacted identifier(s) used in their place in the filing. All references in the case to the redacted identifiers included in the reference list will be construed to refer to the corresponding complete personal data identifier. The reference list must be filed under seal, and may be amended as of right.

The un-redacted version of the document or the reference list must be retained by the Supreme Court as part of the record. The Supreme Court may, however, still require the party to file a redacted copy for the public file.

The responsibility for redacting these personal identifiers rests solely with the party, attorney, or other person filing the document. Although the Clerk of the Supreme Court will typically not review each pleading for compliance with this requirement, filed documents which do not conform to these requirements may be rejected by the Clerk of the Supreme Court before or after docketing in accordance with Supreme Court Rule 20, and parties, attorneys, or other persons who fail to fully comply with this requirement may be sanctioned in accordance with the Supreme Court's Rules.

(d) **Service of Documents by Electronic Means**. The Notice of Electronic Filing that is generated by the Clerk of the Supreme Court through the VISCEFS constitutes service of the filed document on all Filing Users who are parties or attorneys to the appeal or original proceeding. Parties and attorneys who are not Filing Users must be conventionally served by the e-filer with a copy of any document filed electronically in accordance with Rule 40.2.

The certificate of service accompanying a document that has been e-filed must state either that the other party is, or is represented by, a Filing User and will be e-served by the Notice of Electronic Filing or that the other party will be conventionally served in accordance with Rule 40.7. If a party is to be conventionally served, the certificate of service must also indicate which method of conventional service authorized by Rule 40.7 will be used to effectuate service. The Notice of Electronic Filing generated by the VISCEFS system does not replace the certificate of service required by this Rule 15(d).

Notwithstanding this Rule 15(d), the Notice of Electronic Filing shall not constitute electronic service when a Filing User e-files a document in a sealed case. All documents e-filed in a sealed case shall be conventionally served in accordance with Rule 15(e) and must contain a certificate of service that complies with Rule 15(e).

(e) **Service of Documents by Conventional Means**. Conventional service of any document required or permitted to be conventionally served on a party may be accomplished by transmitting a copy of the document, at or before the time of filing, to the party's counsel or, if the party is proceeding pro se, on the party, by personal service, mail, or any other means that does not constitute e-service that should result in the individual served receiving the document no later than the next business day. When a party is personally served, service shall be complete upon receipt of the document. Service by mail or by commercial carrier is complete on mailing or delivery to the carrier. Service by facsimile is an acceptable method of conventional service of process on the parties, provided that the party to be served consents to service by facsimile. When time does not permit actual service on other parties, or the moving party has reason to believe that another party may not receive the motion in sufficient time to respond before the Supreme Court may act (as in certain emergency motions), the moving party should notify such other parties by telephone, e-mail, and/or facsimile of the filing of the motion.

If a document has been e-filed but served by conventional means on one or more parties, the certificate of service accompanying the document shall conform with Rule 15(d). If a document has been conventionally filed, the certificate of service shall contain an acknowledgment of service by each party served or proof of service in the form of a statement of the date and manner of service and of the names of each party served, certified by the person who made service.

(f) **Conventional Filing of Documents.**

(1) *When Permitted***.** Conventional filing of any document required or permitted to be conventionally filed in the Supreme Court may be accomplished by hand-delivery when the Office of the Clerk of the Supreme Court is open or by mail addressed to the Clerk of the Supreme Court.

(2) *Conventional Filing by Inmates***.** A document conventionally filed by an inmate is timely if deposited in the institution's internal mailing system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this Rule. Timely filing may be shown by a notarized statement setting forth the date of deposit and stating that first-class postage has been prepaid.

(3) *Facsimile Filing Prohibited.* Documents may not be filed by facsimile without prior authorization by the Clerk of the Supreme Court or the Supreme Court. Authorization may be secured only in situations determined to be of an emergency nature or other compelling circumstance. In such cases, the original signed document must be conventionally or electronically filed promptly thereafter.

(g) **Signing Briefs, Motions, and Other Papers; Representations to the Court; Sanctions.**

(1) *Signature*. Every petition, brief, written motion, and other paper filed in the Supreme Court must be signed by at least one attorney of record in the attorney's name — or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address, and telephone number. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

(2) *Representations to the Court*. By presenting to the Supreme Court a pleading, brief, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(i) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(ii) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(iii) the factual contentions have evidentiary support; and

(iv) the denials of factual contentions are warranted on the evidence.

For purposes of this Rule 15(g), an electronic signature affixed to a pleading, brief, written motion, or other paper shall constitute signing of the document.

(3) *Sanctions*. If, after notice and a reasonable opportunity to respond, the Supreme Court determines that this Rule 15(g) has been violated, the Supreme Court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

Rule 16. Computation of Time.

(a) **Application of Rule 9 of the Rules Governing the Superior Court.** Computation of time for a matter being considered by the Superior Court while a case is on appeal are subject to computation of time according to SUPER. CT. R. 9.

(b) **Computation of Time.** For purposes of the Supreme Court, in computing any period of time prescribed or allowed by these Rules, by an order of the Court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the Clerk of the Supreme Court inaccessible, in which event the period runs until the next day which is not one of the aforementioned excluded days. As used in this Rule, "legal holiday" refers to the holidays specified in 1 V.I.C. § 171 and includes only January 1 (New Year's Day), January 6 (Three

King's Day), Third Monday in January (Martin Luther King, Jr.'s Birthday), Third Monday in February (Presidents Day), March 31 (Transfer Day), Holy Thursday, Good Friday, Easter Monday, Last Monday in May (Memorial Day), July 3 (V.I. Emancipation Day), July 4 (Independence Day), First Monday in September (Labor Day), Second Monday in October (Columbus Day and Puerto Rico Friendship Day), November 1 (D. Hamilton Jackson Day), November 11 (Veterans Day), Fourth Thursday in November (Thanksgiving Day), December 25 (Christmas Day), December 26 (Christmas Second Day) and such other days as the President, or the Governor may by proclamation declare to be holidays.

(c) **Additional Time After Service by Mail.** Whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon that party and the paper is served by mail, three days shall be added to the prescribed period.

(d) **No Additional Time After Electronic Service**. When a party may or must act within a specified time after documents are served electronically through VISCEFS, no additional time shall be added to the prescribed period.

Rule 17. Extension of Time.

All temporal deadlines shall be strictly construed. Failure to adhere to deadlines may result in dismissal without further notice. Motions for extension of time (excluding notices of appeal) shall be submitted at least five working days before the deadline which is requested to be extended. All other parties must receive a copy of the motion at least three working days before such deadline, and if the party wishes to oppose the motion, such opposition shall be filed at least one working day before the original deadline.

Rule 18. Corporate Disclosure; Business Entity in an Appeal; Representation of a Corporation.

(a) **Required Disclosure for a Business Entity.** Any business entity involved in an appeal must include in its first paper filed with the Supreme Court the nature of its organization: sole proprietorship, corporation, partnership; its use of a trade name, if any; and its affiliation and or its links to other businesses through complete or partial commonality of ownership or financial interest.

(b) **Representation.** If a corporation is pursuing or defending an appeal, it must be represented by counsel duly admitted to practice law in the Supreme Court.

Rule 19. Notice of Possible Judicial Disqualification.

If the Chief Justice, or any Associated Justice or Designated Justice assigned to a panel of the Supreme Court, participated at any stage of the case in the Superior Court or in related proceedings, appellant, promptly after filing the notice of appeal, shall notify the Clerk of the Supreme Court in writing of the justice or designated justice and/or the related proceeding, and shall send a copy of such notice to appellee's counsel. Appellee has a corresponding responsibility to so notify the Clerk if, for any reason, appellant fails to comply with this Rule fully and accurately.

Rule 20. Non-Conforming Motions, Briefs, and Appendices.

All motions, briefs, and appendices must contain supporting documents, including relevant lower court pleadings, and must otherwise conform with the Rules of the Supreme Court. If the supporting documents are not so included, the document may be rejected by the Clerk of the Supreme Court before or after docketing.

Rule 21. Motions.

(a) **Content of Motions; Response.** Unless another form is elsewhere prescribed by these Rules, an application for an order or other relief shall be made by filing a motion for such order or relief with proof of service on all other parties. The motion shall contain or be accompanied by any matter required by a specific provision of these Rules governing such a motion, shall state with particularity the grounds on which it is based, and shall set forth the order or relief sought. If a motion is supported by briefs, affidavits, or other papers, they shall be served and filed with the motion. Any party may file a response in opposition to a motion within fourteen days after service of the motion. All motions shall be accompanied by a proposed order which includes a distribution list of all attorneys and *pro se* parties.

(b) **Motions for Procedural Orders.** Notwithstanding the provisions of this Rule regarding motions generally, motions for procedural orders, including any motion for extension of time, may be acted upon at any time by the Court, without awaiting a response thereto.

(c) **Power of a Single Justice.** In addition to the authority expressly conferred by these Rules or by law, the Chief Justice, or any other justice designated by the Chief Justice, may entertain and may grant or deny any non-dispositive motion or other pretrial matter including, but not limited to, briefing schedules, motions for extensions of time, and motions for substitution of counsel. The action of a single justice may be reviewed by the Court or the appellate panel.

(d) **Motions Decided by the Clerk.** Pursuant to a Rule or order of the Supreme Court, the Clerk may entertain and dispose of specified types of procedural motions which are ministerial in nature, relate to the preparation or printing of the appendix and briefs on appeal, or relate to calendar control. If application is promptly made by any party adversely affected by the action of the Clerk, such action may be reconsidered, vacated, or modified by the Chief Justice or by a panel.

(e) **Number of Copies.** Pursuant to Rule 40.3(h), no paper copies of electronically filed motions need be filed with the Court. If a party is exempt from electronic filing, or if electronic filing has been disallowed, ~~T~~three copies of all motions shall be filed with the original, but the Court may require that additional copies be furnished.

(f) **Oral Argument.** No oral argument will be permitted on any motion unless ordered by the Supreme Court.

(g) **Uncontested Motions.** Each uncontested motion shall be certified as uncontested by counsel. In the absence of a timely response, the Court may treat a motion without certification as uncontested.

Rule 22. Briefs.

(a) **Brief of the Appellant.** The brief of the appellant shall contain under appropriate

headings and in the order here indicated:

(1) A table of contents, with page references, and a table of cases (alphabetically arranged), statutes, and other authorities cited, with references to the pages of the brief where they are cited.

(2) A statement of subject matter and appellate jurisdiction. The statement shall include:

(i) a statement of the basis for subject matter jurisdiction in the Superior Court, with citation to applicable statutory provisions and with reference to the relevant facts to establish such jurisdiction;

(ii) a statement of the basis for jurisdiction in the Supreme Court, with citation to applicable statutory provisions and with reference to the relevant facts to establish such jurisdiction. The statement shall include relevant filing dates establishing the timeliness of the appeal and

(a) shall state that the appeal is from a final order or a final judgment that disposes of all claims with respect to all parties or, if not,

(b) shall include information establishing that the Supreme Court has jurisdiction on some other basis.

(3) A statement of the issues presented for review. This shall include a designation by reference to specific pages of the appendix or place in the proceedings at which each issue on appeal was raised, objected to, and ruled upon; and a statement of the standard or scope of review for each issue on appeal (e.g., whether the trial court abused its discretion, whether its findings of fact are clearly erroneous, etc.). The statement shall also provide, by way of subdivision,

(i) a statement of whether this case or proceeding has been before the Supreme Court previously, and whether the party is aware of any other case or proceeding that is in any way related, completed, pending, or about to be presented before the Supreme Court or any other court, state or federal. If the party is aware of any previous or pending appeals before the Supreme Court arising out of the same case or proceeding, the statement should identify each such case; and

(ii) a copy of the order or orders being appealed and, if any, the relevant opinions of the Superior Court, which shall be inserted in the appendix.

(4) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of proceedings, and its disposition in the court below. There shall follow a statement of the facts relevant to the issues presented for review, with appropriate references to the record (*see* paragraph (d)of this Rule 22).

(5) An argument. The argument may be preceded by a summary. The argument shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes, and parts of the record relied on.

(6) A short conclusion stating the precise relief sought.

(b) **Brief of the Appellee.** The brief of the appellee shall conform to the requirements of paragraph (a)(1)–(6) of this Rule, except that a statement of jurisdiction, of the issues, or of the case need not be made unless the appellee is dissatisfied with the statement of the appellant.

(c) **Reply Brief.** The appellant may file a brief in reply to the brief of the appellee, and if

the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross appeal. No further briefs may be filed except with leave of Court. All reply briefs shall contain a table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with references to the pages of the reply brief where they are cited.

(d) **References in Briefs to the Record.** All assertions of fact in briefs shall be supported by a specific reference to the record. All references to portions of the record contained in the appendix shall be supported by a citation to the pages of the appendix at which those parts appear, followed by a parenthetical description of the document to which they referred, unless otherwise apparent from context. Intelligible abbreviations may be used. If reference is made to evidence, the admissibility of which is in controversy, reference shall be made to the pages of the appendix or of the transcript at which the evidence was identified, offered, and received or rejected.

(e) **Reproduction of Statutes, Rules, and Regulations.** If determination of the issues presented requires the study of statutes, rules, regulations, etc., or relevant parts thereof, they shall be reproduced in the appendix, or they may be supplied to the Court in pamphlet form.

(f) **Length of Briefs.** Except by permission of the Court, principal briefs shall not exceed thirty pages, and reply briefs shall not exceed fifteen pages, exclusive of pages containing the table of contents and the table of authorities.

(g) **Briefs in Cases Involving Cross Appeals.** If a cross appeal is filed, the party who first files a notice of appeal, or in the event that the notices are filed on the same day, the plaintiff in the proceeding below, shall be deemed the appellant for the purposes of these Rules, unless the parties otherwise agree or the Court otherwise orders. The brief of the appellee shall conform to the requirements of paragraphs (a)(1)–(6) and (f) of this Rule 22 with respect to the appellee's cross appeal as well as response to the brief of the appellant, except that a statement of the case need not be made unless the appellee is dissatisfied with the statement of the appellant.

(h) **Briefs in Cases Involving Multiple Appellants or Appellees.** In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

(i) **Citations.** In the argument section of the brief, citations should be made to the United States Supreme Court; the United States Court of Appeals for the Third Circuit; the Supreme Court of the Virgin Islands; the Superior Court of the Virgin Islands; the District Court of the Virgin Islands; other United States courts of appeals; and/or any other court, in that order of precedence. For each legal proposition supported by citation in the argument, counsel shall cite and distinguish any opposing authority within the jurisdiction. Counsel shall make parallel citations to the V.I. Reports where Third Circuit Court of Appeals, District Court, Supreme Court, and Superior Court decisions are reported. Citations to federal opinions that have been reported shall be to the United States Reports, the Federal Reporter, the Federal Supplement, or the Federal Rules Decisions, and shall identify the judicial circuit or district and year of decision. Citations to the United States Supreme Court opinions that have not yet appeared in the official reports may be to the Supreme Court Reporter, the Lawyer's Edition, or United States Law Week in that order of preference.

Citations to United States Law Week shall include the month, day, and year of the decision. Citations to federal decisions that have not been formally reported shall identify the court, docket number, and date, or refer to the electronically transmitted decision. Citations to

services and topical reports, whether permanent or looseleaf, and to electronic citation systems, shall not be used if the text of the case cited has been reported in the United States Reports, the Federal Reporter, the Federal Supplement, the Federal Rules Decisions or the Virgin Islands Reports. Citations to state court decisions should include the West Reporter system whenever possible, with an identification of the state court. Any decision cited by counsel that is not retrievable in hard copy form in the Supreme Court of the Virgin Islands library must be provided as a part of the appendix.

When pertinent and significant authorities come to the attention of a party after the party's brief has been filed, or after oral argument but before decision, a party shall promptly advise the Clerk of the Supreme Court, by letter, with a copy to all counsel, setting forth the citations. There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain, but the letter shall state the reasons for the supplemental citations without argument. A response, if any, shall be made promptly and shall be similarly limited.

Any failure to follow this format may result in sanctions without further notice.

(j) **Appellee's Brief in Consolidated Appeals.** The brief of an appellee who has been permitted to file one brief in consolidated appeals shall contain an appropriate cross reference index which clearly identifies and relates appellee's answering contentions to the specific contentions of the various appellants. The index shall contain an appropriate reference by appellee to the question raised and the page in the brief of each appellant.

(k) **Footnotes.** Excessive footnotes in briefs are discouraged. Footnotes shall be printed in no less than ten point type.

(l) **Certificate.** Each party shall include a certification in its initial brief filed with the Supreme Court that at least one of the attorneys whose names appear on the brief is a member of the bar of the Supreme Court. Attorneys regularly admitted to the Virgin Islands bar under ~~Super. Ct.~~ Supreme Court Rules 2~~3~~01-2~~3~~04 or any predecessor rules, are members of the bar of the Supreme Court.

(m) **Waiver of Issues.** Issues that were (1) not raised or objected to before the Superior Court, (2) raised or objected to but not briefed, or (3) are only averted to in a perfunctory manner or unsupported by argument and citation to legal authority, are deemed waived for purposes of appeal, except that the Supreme Court, at its option, may notice an error not presented that affects substantial rights.

(n) **Constitutionality of Statute.** It shall be the duty of a party who draws in question the constitutionality of any Virgin Islands statute in any proceeding in the Supreme Court to which the Government of the Virgin Islands, or any agency thereof, or any officer or employee thereof, as such officer or employee, is not a party, upon the filing of the record, or as soon thereafter as the question is raised in the Supreme Court, to give immediate notice in writing to the Attorney General of the Virgin Islands of the existence of said question.

Rule 23. Brief of *Amicus Curiae*.

A brief of *amicus curiae* may be filed only if accompanied by written consent of all parties or by leave of the Supreme Court. The brief may be filed conditionally with the motion for leave to file it, which shall identify the interest of the movant and shall state the reasons why a brief of *amicus curiae* is desirable. Any *amicus curiae* shall file its brief within the time allowed the party whose position the amicus will support, unless the Supreme Court for cause shown grants leave for later filing, in which event it shall specify within what period an opposing

party may answer. A motion of *amicus curiae* to participate in the oral argument will be granted only for extraordinary reasons.

Rule 24. Appendix to the Briefs.

(a) **Duty of Appellant to Prepare and File; Content of Appendix; Time for Filing; Number of Copies.** Appellant shall prepare and file an appendix to the briefs which shall contain all materials designated by all parties and shall include: a table of contents with page references and a copy of the notice of appeal; the judgment, order, or decision being appealed; a certified list of docket entries from the Superior Court; and relevant portions of a trial transcript, exhibit, or other parts of the record referred to in the briefs at such length as may be necessary to preserve context. Except where they have independent relevance, memoranda of law filed in the Superior Court should not be included in the appendix. Matters that were sealed at the Superior Court level shall so indicate on the cover of the appendix. In an appeal challenging a criminal sentence, the appellant shall attach five copies of the presentence investigation report in an appropriately labeled sealed envelope.

Whenever an appeal challenges the sufficiency of the evidence to support a verdict or other determination (including an argument that a finding is clearly erroneous), the appendix shall reprint all the evidence of record which supports the challenged determination. The fact that parts of the record are not included in the appendix shall not prevent the parties or the Supreme Court from relying on such parts. The appendix is a separate, freestanding document.

Appellant shall file ~~seven copies of~~ the appendix with the Clerk of the Supreme Court at the time appellant's briefs are filed~~, and at the same time, shall serve one copy of the appendix on counsel for each party separately represented, unless the Supreme Court directs the filing or service of a lesser number, which shall occur only in extraordinary cases~~. If either party files a separate appendix, that party shall file ~~seven copies~~ it with the Clerk of the Supreme Court at the time its briefs are filed and serve one copy of the separate appendix on counsel for each party separately represented. If a party is required to e-file, the appendix shall be e-filed with the Clerk of the Supreme Court, served in accordance with Rule 15(d), and four paper copies filed in accordance with Rule 40.3(h). If a party is exempt from e-filing, or if e-filing has been disallowed in a particular case, it shall conventionally file seven copies of the appendix (or, if authorized, a separate appendix) along with seven copies of its brief, and at the same time shall conventionally serve one copy of the appendix on counsel for each party separately represented, unless the Supreme Court directs the filing or service of a lesser number, which shall be allowed only in extraordinary cases

(b) **Determination of Contents of Appendix; Cost of Producing.** The parties are required to consult and agree on the contents of the appendix. It is the duty of the parties in the first instance to cooperate in filing one joint appendix on appeal. The Supreme Court may permit, upon timely motion, the filing of separate appendices upon certification, with supporting documents, that a given party is not cooperating.

The following procedure is recommended to accomplish the goal of filing the joint appendix: Within fourteen days of when the transcript is prepared or the certification is filed, appellant should serve on the appellee a designation of the parts of the record which the appellant intends to include in the appendix and a statement of the issues which the appellant intends to present for review. Within fourteen days after receipt of the designation, the appellee shall serve upon the appellant a designation of those additional parts of the record that it deems necessary to

present to the Supreme Court. The appellant shall include in the appendix the parts thus designated with respect to the appeal and any cross appeal. The parties shall not engage in unnecessary designation. The provisions of this paragraph shall apply to cross appellants and cross appellees. Sanctions may result from a failure to cooperate in the filing of a joint appendix.

Unless the parties otherwise agree, the cost of producing the appendix shall initially be paid by the appellant, but if the appellant considers that parts of the record designated by the appellee for inclusion are unnecessary for the determination of the issues presented, the appellant may so advise the appellee and the appellee shall advance the cost of including such parts. The cost of producing the appendix shall be taxed as costs in the case.

(c) **Arrangement of the Appendix.** The beginning of the appendix shall include a table of contents. The relevant docket entries shall be set out following the table of contents. Thereafter, other parts of the record shall be set out, including exhibits and any relevant transcript entries, preferably in chronological order. The pages of the appendix shall be clearly and sequentially numbered; the page numbers within the original transcript may also appear on the page.

(d) **Sanctions Pursuant to Determination of Contents of Appendix.** The Court, *sua sponte* by rule to show cause or on the motion of any party, may impose sanctions in the form of denial of all or some of the costs of the appeal upon finding that any party has unreasonably and vexatiously caused the inclusion of materials in an appendix that are unnecessary for the determination of the issues presented on appeal.

A party filing such a motion shall do so within fourteen days after a bill of costs has been served. The movant shall submit with the motion an itemized statement specifically setting forth, by name and appendix page number, the item or items that the movant asserts were unnecessarily included in the appendix. Any party against whom sanctions are requested may file an answer to the motion or rule to show cause. The answer shall be filed within fourteen days after service of the motion or rule to show cause.

Rule 25. Filing and Service of Briefs.

(a) **Time for Serving and Filing Briefs.** Appellant shall serve and file a brief within forty days after the date on which the record is complete and the briefing schedule is issued whichever occurs ~~later~~earlier. The appellee shall serve and file a brief within thirty days after service of the brief of the appellant. The appellant may serve and file a reply brief within fourteen days after service of the brief of the appellee. The Supreme Court by order may modify the periods prescribed above for serving and filing briefs for specific cases.

(b) **Number of Copies to Be Filed and Served.** If a party is required to e-file, briefs shall be e-filed with the Clerk of the Supreme Court, served in accordance with Rule 15(d), and seven paper copies filed in accordance with Rule 40.3(h). If a party is not required to e-file, s~~S~~even copies of each brief shall be conventionally filed with the Supreme Court, and two copies shall be conventionally served on counsel for each party separately represented.

(c) **Consequence of Failure to File Briefs.** If an appellant fails to file a brief within the time provided by this Rule, or within the time as extended, an appellee may move for dismissal of the appeal.

If an appellee fails to file a brief within the time provided by this Rule, or within the time as extended, the appellee will not be heard at oral argument except by permission of the Supreme Court.

Rule 26. Prehearing Conference.

The Supreme Court may direct the attorneys for the parties to appear before a Justice, or other designated person for a prehearing conference to consider the simplification of the issues and such other matters as may aid in the disposition of the proceeding by the Supreme Court.

Rule 27. Oral Argument.

(a) **In General.** Oral argument will normally be allowed in all cases unless the Supreme Court determines after examination of the briefs and record that oral argument is not needed.

Oral argument will seldom be permitted in matters in which one of the parties appears *pro se*. In certain appeals, the Clerk of the Supreme Court will inform the parties of the issues that the panel wishes the parties to address.

In determining the need for oral argument, the Supreme Court will consider whether:

(1) the appeal is frivolous; or

(2) the dispositive issue or set of issues has been recently authoritatively decided; or

(3) the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.

(b) **Notice of Argument; Postponement.** The Clerk of the Supreme Court shall advise all parties whether oral argument is to be heard, and if so, of the time and place therefor, and the time to be allowed each side. Postponement will be permitted rarely, and only in extraordinary circumstances.

(c) **Order and Content of Argument.** The appellant is entitled to open and conclude the argument if time is reserved for rebuttal. The opening argument shall include a fair statement of the case. Counsel will not read at length from briefs, records, or authorities.

(d) **Cross and Separate Appeals.** A cross or separate appeal shall be argued with the initial appeal as a single argument, unless the Supreme Court otherwise directs. If a case involves a cross appeal, the party who first files a notice of appeal, or in the event that the notices are filed on the same day, the plaintiff in the proceeding below shall be deemed the appellant for the purpose of this Rule, unless the parties otherwise agree or the Court otherwise directs. If separate appellants support the same argument, care shall be taken to avoid duplication of argument.

(e) **Non-Appearance of Parties.** If any of the parties fail to appear to present argument, the ~~Court~~panel will hear argument on behalf of the remaining parties, and sanctions shall be considered against the absent party.

(f) **Use of Physical Exhibits at Argument; Removal.** If physical exhibits other than documents are to be used at the argument, counsel shall notify the Clerk of the Supreme Court no later than seven days before the date of argument so that the appropriate arrangements may be made, and counsel shall arrange to have them placed in the courtroom before the Supreme Court convenes on the date of the argument. After the argument, counsel shall cause the exhibits to be removed from the courtroom unless the Supreme Court otherwise directs. Failure to remove the exhibits shall result in their immediate disposal.

(g) **Recording of Oral Argument.** The Supreme Court may, at its discretion, record the video and audio of an oral argument for live or archived viewing by the public. In all instances in which oral argument is recorded, counsel and unrepresented parties must speak clearly into the

microphone and not wander from the microphone or the podium so that audio and video can be captured.

Rule 28. Entry of Judgment.

The notation of a judgment in the docket constitutes entry of the judgement. The Clerk of the Supreme Court or a designee shall attest and enter the judgment following receipt of the judgment order or order with accompanying memorandum opinion of the Supreme Court. The Clerk shall ~~mail~~distribute to all parties a copy of the opinion and order, if any, or of the judgment order if no opinion was written, and give notice of the date of entry of the judgment.

All written opinions of the Supreme Court shall be filed with and preserved by the Clerk. All opinions shall be printed under the supervision of the Clerk. All persons other than the parties desiring a (certified) copy of a printed opinion of the Supreme Court may receive one from the Clerk of the Supreme Court at a fee as may be set by the Supreme Court from time to time.

Rule 29. Interest on Judgments.

Unless otherwise provided by law, if a judgment for money in a civil case is affirmed, whatever interest is allowed by law shall be payable from the date the judgment was entered in the Superior Court. If a judgment is modified or reversed with a direction that a judgment for money be entered in the Superior Court, the allowance of interest shall be determined by the Superior Court upon resolution of the matter.

Rule 30. Costs; Damages for Delay.

(a) **To Whom Allowed.** Except in criminal cases or as otherwise provided by law, if an appeal or petition is dismissed, reasonable costs, which may include attorney's fees, shall be taxed against the appellant unless otherwise agreed by the parties or ordered by the Supreme Court; if a judgment is affirmed or a petition denied, reasonable costs shall be taxed against the appellant or petitioner unless otherwise ordered; if a judgment is reversed or a petition granted, reasonable costs shall be taxed against the appellee or the respondent unless otherwise ordered; if a judgment is affirmed or reversed in part, or is vacated, or a petition granted in part and denied in part, reasonable costs shall be allowed only as ordered by the Supreme Court. If the side against whom costs are assessed has multiple parties, the Supreme Court may apportion the assessment or impose it jointly and severally. In cases involving the Government of the Virgin Islands or an agency or officer thereof, reasonable costs shall only be awarded as authorized by law. The Supreme Court shall, in its discretion, determine whether costs are reasonable.

If the Supreme Court determines that an appeal or petition is frivolous, it may, after a separately filed motion or notice from the Court and reasonable opportunity to respond, award just damages and single or double costs to the appellee or the respondent.

(b) **Bill of Costs; Objections; Costs to Be Inserted in Mandate or Added Later.** A party who desires such costs to be taxed shall state them in an itemized and verified bill of costs, including attorney's fees, which the party shall file with the Clerk of the Supreme Court, with proof of service, within fourteen days after the entry of judgment. The Supreme Court shall deny untimely bills of costs unless a motion showing extraordinary circumstances is filed with the bill.

Objections to the bill of costs must be filed within fourteen days of service on the party against whom costs are to be taxed unless the time is extended by the Supreme Court. An answer to objections to a bill of costs may be filed within fourteen days of service of the objections. Issuance of the mandate shall not be delayed for taxation of costs, but if the mandate has been issued before final determination of costs, the statement, or any amendment thereof, shall be added to the mandate upon request by the Clerk of the Supreme Court to the Clerk of the Superior Court. However, if a party seeks attorney's fees as among the costs to be taxed, the amount of attorney's fees to be awarded—if any—shall be determined by the Superior Court on remand.

Rule 31. Petition for Rehearing.

(a) **Time for Filing; Content; Answer; Action By Court If Granted.** A petition for rehearing may be filed within fourteen days after entry of judgment. The petition shall state with particularity the points of law or fact which, in the opinion of the petitioner, the Supreme Court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present. Oral argument in support of the petition will not be permitted. No answer to a petition for rehearing will be received unless requested by the Supreme Court, but a petition for rehearing will ordinarily not be granted in the absence of such a request. If a petition for rehearing is granted, the Supreme Court may make a final disposition of the cause without reargument or may restore it to the calendar for reargument or resubmission or may make such other orders as are deemed appropriate under the circumstances of the particular case.

(b) **Form of Petition; Number of Copies.** The petition shall not exceed fifteen pages in length, double-spaced, and pursuant to Rule 40.3(h), no paper copies of electronically filed petitions need be filed with the Court. If a party is exempt from electronic filing, or if electronic filing has been disallowed, seven copies shall be filed with the Supreme Court. All remaining parties shall be served in accordance with these Rules.

Rule 32. Issuance of Mandate; Stay of Mandate; Appeal.

(a) **Issuance of Mandate**. The mandate of the Supreme Court shall issue twenty-one days after the entry of judgment unless the time is shortened or enlarged by order. A certified copy of the judgment and a copy of the opinion of the Supreme Court, if any, and any direction on costs shall constitute the mandate, unless the Court directs that a formal mandate issue. The timely filing of a petition for rehearing will stay the mandate until disposition of the petition unless otherwise ordered by the Supreme Court. If the petition is denied, the mandate shall issue ten days after entry of the order denying the petition unless otherwise ordered. The filing of a notice of appeal or application for a writ of certiorari to the United States Court of Appeals for the Third Circuit will not stay the mandate.

(b) **Stay of Mandate**. A party who files a motion requesting a stay of the mandate pending appeal or application for writ of certiorari to the United States Court of Appeals for the Third Circuit pursuant to Section 23 of the Revised Organic Act, or the Supreme Court of the United States, must file, at the same time, proof of service on all other parties. The motion must show that an appeal would present a substantial question and that there is good cause for a stay. If granted, the Clerk of the Supreme Court shall so notify the Clerk of the Superior Court. The Supreme Court may require a bond or other security as a condition to the grant of a stay of the

mandate.

(c) **Appeal.** Any appeal or petition for writ of certiorari from a judgment or order of the Supreme Court to the United States Court of Appeals for the Third Circuit or the Supreme Court of the United States shall be made in accordance with rules promulgated by the Third Circuit Court of Appeals or the United States Supreme Court, as the case may be.

Rule 33. Voluntary Dismissal.

~~Upon payment of any fees due, the Clerk of the Supreme Court shall dismiss the case and issue the mandate if the parties to an appeal or other proceeding sign and file with the Clerk of the Supreme Court an agreement that the proceeding be dismissed. The agreement must specify the terms for payment of costs. An appeal may be dismissed on motion of the appellant upon such terms as may be agreed upon by the parties or fixed by the Supreme Court~~ If the parties to a docketed appeal or other proceeding sign and file a stipulation for dismissal, specifying the terms as to payment of costs, and pay whatever fees are due, the case shall be dismissed upon approval by the Supreme Court, but no mandate or other process shall issue without an order of the court. Upon motion and notice, the Supreme Court may dismiss the appeal upon terms fixed by the Supreme Court; provided, however, that such a dismissal shall not relieve the appellant or petitioner of the duty to pay the docketing fee or receive permission to proceed *in forma pauperis*.

Rule 34. Substitution of Parties.

(a) **Death of a Party.** If a party dies after a notice of appeal is filed or while a proceeding is otherwise pending in the Supreme Court, the personal representative of the deceased party may be substituted as a party on motion filed by the representative, or by any party, with the Clerk of the Supreme Court. If the deceased party has no representative, any party may suggest the death on the record and proceedings shall then be had as the Supreme Court may direct. If an appellee dies after entry of judgment or order in the Superior Court but before a notice of appeal is filed, an appellant may proceed as if death had not occurred. After the notice of appeal is filed, substitution shall be effected in the Supreme Court in accordance with this paragraph. If a party entitled to appeal shall die before filing a notice of appeal, the notice of appeal may be filed by the personal representative, or, if there is no personal representative, by the attorney of record within the time prescribed by these Rules. After the notice of appeal is filed, substitution shall be effected in the Supreme Court in accordance with this paragraph.

(b) **Substitution for Other Causes.** If substitution of a party in the Supreme Court is necessary for any reason other than death, substitution shall be effected in accordance with the procedure prescribed in paragraph (a) of this Rule 34, and by order of the Supreme Court.

(c) **Public Officers; Death or Separation from Office.**

(1) When a public officer who is a party to an appeal or other proceeding in the Supreme Court in his or her official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and his or her successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order

shall not affect the substitution.

(2) When a public officer is a party to an appeal or other proceeding in his or her official capacity, he or she may be described as a party by his or her official title rather than by name; but the Supreme Court may require his or her name to be added.

Rule 35. Duties of the Clerk.

(a) **Days of Operation.** The office of the Clerk of the Supreme Court shall be open to receive filings during business hours on all days except Saturdays, Sundays, and legal holidays. Legal holidays when the office shall be closed are defined in Rule 16(b), but the Chief Justice may provide that the office of the Clerk of the Supreme Court shall be open for specified hours on Saturdays, Sundays, or legal holidays.

(b) **The Docket; Calendar; Other Records Required.** The Clerk of the Supreme Court shall maintain the docket which shall contain an index of cases, in such form and style as may be prescribed by the Supreme Court, and shall enter therein each case. Cases shall be assigned consecutive file numbers. The file number of each case shall be noted on the docket. All papers filed with the Clerk of the Supreme Court and all process, orders, and judgments shall be entered chronologically in the docket. Entries shall be brief but shall show the nature of each paper filed or judgment or order entered. The entry of an order or judgment shall show the date the entry is made. The Clerk of the Supreme Court shall enter a record of all papers filed, all actions taken, all process, orders, and judgments, and shall keep such other books and records as may be required by the Supreme Court.

(c) **Notice of Orders or Judgments.** Immediately upon the entry of an order or judgment, the Clerk of the Supreme Court shall electronically or conventionally serve, in accordance with Rule 40, a notice of entry ~~by mail~~ upon each party to the proceeding ~~(or by putting a copy of the order or judgment in counsel's Supreme or Superior Court box)~~ together with a copy of any opinion respecting the order or judgment, and shall make a note in the docket of the ~~mailing~~service. Service on a party represented by counsel shall be made on counsel.

(d) **Custody of Records and Papers.** The Clerk of the Supreme Court shall have custody of the records and papers of the Supreme Court, and shall not permit any original record or paper to be taken from the Clerk's custody except as authorized by the orders or instructions of the Supreme Court. Original papers transmitted as the record on appeal or review shall, upon disposition of the case, be returned to the Superior Court. The Clerk of the Supreme Court shall preserve the electronic record and, until the case is complete and closed, at least one copy of briefs and appendices and other printed papers filed.

(e) **Dismissal for Failure to Prosecute.** When an appellant fails to comply with the Rules of the Supreme Court, the Clerk of the Supreme Court shall issue written notice to counsel or to the appellant who appears *pro se* that upon the expiration of fourteen days from the date of the notice, the appeal may be dismissed for want of prosecution unless appellant remedies the deficiency within that time. If the deficiency is not remedied within this period, the Clerk or a justice is authorized to dismiss the appeal for want of prosecution and issue a certified copy thereof to the Clerk of the Superior Court as the mandate. The appellant shall not be entitled to remedy the deficiency after the appeal is dismissed except by order of the Court. A motion to set aside such an order must be justified by the showing of good cause and may not be filed after fourteen days of the date of dismissal.

Notwithstanding the preceding paragraph, if an appellant fails to comply with the Supreme Court Rules of Appellate Procedure with respect to the timely filing of a brief and appendix, at any time after the seventh day following the due date, the Clerk of the Supreme Court or a justice is authorized to dismiss the appeal for want of timely prosecution. The procedure to be followed in requesting an order to set aside dismissal of the appeal is the same as that set forth in the preceding paragraph.

Rule 36. Admission of Attorneys; Entry of Appearance; Conduct.

(a) **Admission to the Bar of the Supreme Court.** All persons admitted to the Virgin Islands Bar pursuant to Supreme Court Rules 201, 202, and 204 or any predecessor rule ~~An attorney who has been admitted to practice in the Virgin Islands~~ may appear before the Supreme Court and ~~is~~are subject to all conditions of practice as recognized in the Supreme Court. ~~Admission *pro hac vice* will be granted in limited circumstances in accordance with the practice of the Supreme Court.~~

(b) **Entry Of Appearance.** ~~At the time a case is docketed, counsel for the appellant or petitioner, or *pro se* party shall file an appeal information statement and written appearance which shall include an address where notices and papers may be mailed or served upon him or her.~~ Counsel for all parties or *pro se* parties ~~in the Superior Court~~ entitled to participate in ~~the~~ a proceeding~~s~~ in the Supreme Court ~~as appellees or respondents~~ and desiring to do so~~,~~ shall file ~~similar~~ written appearances which shall include an address where notices and papers may be mailed or served upon him or her. A notice of appeal which satisfies the content requirements of Rule 4(c) shall serve as the written appearance for counsel or the *pro se* party who initiated the proceeding.

(c) **Conduct of Counsel.** The Supreme Court expects counsel to conduct themselves professionally and with civility at all times, which includes written and oral communications among counsel and with the Court. Violation of this Rule may lead to sanctions.

(d) ~~**Interim Rules Governing Attorneys.** Pending adoption of appropriate rules by the Supreme Court, Rules 301 through 306 of the Rules of the Virgin Islands Superior Court are hereby adopted by the Supreme Court of the Virgin Islands to govern the admission, conduct and discipline of attorneys in the Supreme Court and regulation of the Virgin Islands Bar.~~ **Withdrawal, Substitution, or Discharge of Counsel.**

(1) An attorney desiring to withdraw as counsel of record must file a motion requesting leave therefor. The motion must show that prior notice of the motion was given by service upon the attorney's client. The Supreme Court may, in its discretion, grant or deny such motion or, where appropriate, remand the case for filing of a motion to withdraw.

(2) A substitution of counsel may be made by filing a notice of withdrawal and substitution. The notice must provide withdrawing counsel's name and substituting counsel's name, physical and electronic mail addresses to be used for service, and telephone number. A notice of withdrawal and substitution of counsel must be signed by the client consenting thereto.

(3) A client desiring to discharge the client's counsel of record must file a motion requesting leave therefor. The motion must show service upon the attorney. The Supreme Court may, in its discretion, grant or deny such motion or, where appropriate, remand the case for the filing of a motion to withdraw.

(4) All motions for withdrawal, substitution, or discharge of counsel in criminal or other cases in which counsel was appointed by the Supreme Court or the Superior Court must comply

with Supreme Court Rule 210.3. Notwithstanding this Rule 36(d), motions to withdraw as counsel pursuant to *Anders v. California* are not permitted.

Rule 37. Rules.

The Supreme Court, by order of the Chief Justice or Promulgation Order of the Court, may from time to time make and amend Rules governing its practice after giving appropriate public notice and an opportunity for comment from the local Bench, the public, and the local bar.

Rule 38. Certification of Questions of Law.

(a) **Generally.** The Supreme Court of the Virgin Islands may answer questions of law certified to it by a court of the United States or the court of last resort of a state, the District of Columbia, or a territory of the United States, if there is involved in any proceeding before the certifying court a question of law which may be determinative of the cause then pending in the certifying court and concerning which it appears there is no controlling precedent in the decisions of the supreme court.

(b) **Method of Invoking.** A request for certification under this rule may be invoked upon the motion of the court or of any party to the cause.

(c) **Right to Reformulate.** The Supreme Court of the Virgin Islands may reformulate a question of law certified to it.

(d) **Contents of Certification Order.** A certification order shall set forth:

(1) The questions of law to be answered;

(2) A statement of all facts relevant to the questions certified;

(3) The nature of the controversy in which the questions arose; and

(4) A designation of the party or parties who will be the appellant(s), i.e. the party holding the affirmative, in the appellate court.

(e) **Preparation of Certification Order.**

(1) The certification order shall be prepared by the certifying court, signed by the judge presiding at the hearing and forwarded to the Supreme Court by the clerk of the certifying court under the official seal of the court. The Supreme Court may require the original or copies of all, or of any portion, of the record before the certifying court, to be filed under the certification order, if, in the opinion of the Supreme Court, the record or any portion may be necessary in answering the questions.

(2) The Supreme Court shall accept or rejected a certified question within 60 days of receiving the certification order. A request for certification is deemed denied if not granted within 60 days of filing in the Supreme Court.

(f) **Costs.** Fees and costs shall be the same as in civil appeals docketed before the Supreme Court. Payment of the docketing fee shall be borne by the party seeking certification. If both parties seek certification, then the parties shall each pay one-half of the docketing fee. In any other circumstances, fees and costs shall be paid as directed by the certifying court in its order of certification.

(g) **Briefs and Argument.** Upon the agreement of the Supreme Court to answer the certified questions, notice shall be given to all parties. The appellant or plaintiff in the certifying court shall file a brief within 40 days from the receipt of the notice, and the opposing party

within 30 days from service of copies of the appellant or plaintiff's brief. Briefs must be in the manner and form of briefs as provided in Rules 22 and 25, and oral arguments shall be as provided in Rule 26.

(h) **Opinion.** The written opinion of the Supreme Court, stating the law governing each question certified, shall be sent by the clerk of the Supreme Court under the court's seal to the certifying court and to the parties. No mandate shall issue after publication of answers to certified questions.

~~(i) **Effective Date.** This Rule shall take effect on January 1, 2010.~~

Rule 39. Transfers of Actions or Proceedings to and from Supreme Court.

(a) **Applications for Transfer to Supreme Court.** All applications to transfer an action or proceeding to the Supreme Court pursuant to 4 V.I.C. § 32(d) must contain a statement (i) summarizing the action or proceeding and whether the matter raises purely legal questions or requires findings of fact, (ii) identifying the issues of public importance raised in the case, (iii) explaining why those issues are of such urgency that use of the normal appellate process would be inadequate, and (iv) providing any other reasons as to how a transfer to the Supreme Court would promote the administration of justice. Proceedings on an application for transfer to the Supreme Court shall conform, so far as is practicable, to the procedure for extraordinary writs prescribed in Supreme Court Rules 13(a) and (b). In the event an application for transfer is granted, the Supreme Court shall, by order, establish the specific procedures to govern the action or proceeding.

(b) **Applications for Transfer from Supreme Court.** All applications to transfer an action or proceeding from the Supreme Court to any other court within the judicial branch pursuant to 4 V.I.C. § 32(d) must contain a statement (i) identifying the court to which a transfer is sought; (ii) explaining the basis for the other court's jurisdiction over the subject matter and the parties; and (iii) providing any other reasons as to how a transfer from the Supreme Court to another court would promote the administration of justice.

Proceedings on an application for transfer from the Supreme Court shall conform, so far as is practicable, to the procedure for consideration and filing of motions. In the event an application for transfer is granted, the rules of the court to which the action or proceeding is transferred shall govern the action or proceeding after transfer.

(c) **Docketing of Applications.** All applications to transfer an action or proceeding from a court or administrative agency to the Supreme Court brought pursuant to Rule 39(a) shall be docketed by the Clerk of the Supreme Court as an original civil proceeding, captioned as "In re [party bringing application]." However, all applications to transfer an action or proceeding from the Supreme Court to another court brought pursuant to Rule 39(b) shall be filed as a motion within the existing Supreme Court case.

Rule 40. Electronic Filing and Service

40.1. Definitions

As used in Rule 40:

(1) "Conventional filing" or "file through conventional means" means filing a document in accordance with the procedure established in Rule 15(f).

(2) "Virgin Islands Supreme Court Electronic Filing System" or "VISCEFS" means the C-

Track system utilized by the Supreme Court to accept and transmit electronic documents. VISCEFS may be accessed from the Supreme Court's website at www.visupremecourt.org.

(3) "Virgin Islands Appellate Case Management System" or "VIACMS" means the C-Track system utilized by the Supreme Court to record information and documents related to all cases filed in the Supreme Court. VIACMS may be accessed from the Supreme Court's website at www.visupremecourt.org.

(4) "Document" means any pleading, motion, exhibit, order, judgment, decree, or other form of written communication or memorialization, whether prepared on paper or electronically, that is filed with the Clerk of the Supreme Court.

(5) "E-document" or "electronic document" means any document, other than an e-record, that has been e-filed in accordance with these Rules.

(6) "E-file" or "e-filing" or "electronically file" or "electronic filing" means the electronic transmission of a document to the Clerk of the Supreme Court for the purposes of filing and storing the document with the VIACMS.

(7) "E-record" means legible electronic copies of the Superior Court's certified docket entries, the order or judgment appealed from, the portions of any transcripts ordered by the parties and filed by the reporter pursuant to Rule 10(b), and any other portions of the record on appeal that have been prepared, assembled, and e-filed with the Clerk of the Supreme Court by the Clerk of the Superior Court in an electronic format as prescribed in these Rules.

(8) "E-service" or "service through electronic means" means the electronic transmission of a document in accordance with the procedure established in Rule 15(d) in lieu of serving such document through conventional service.

(9) "Electronic signature" is a signature that is either affixed or deemed to be affixed to an e-document or e-record as prescribed in Rule 40.4.

(10) "File" or "filing" means the submission of documents, either conventionally or electronically, with the Supreme Court, depending on whether the party and the matter are subject to electronic filing pursuant to Rule 40.2.

(11) "E-filer" means the Filing User whose user ID and password were used to e-file an e-document in a Supreme Court proceeding.

(12) "Filing User" means an attorney or other authorized person who has properly registered with the VISCEFS system as set forth in Rule 40.2.

(13) "Notice of Electronic Filing" refers to a notification, generated automatically upon the electronic filing of a document through VISCEFS, sent by the Clerk of the Supreme Court to all parties to an appeal or original proceeding who are subject to electronic filing pursuant to Rule 40.2, that an electronic filing has been placed on the docket and stored in the VIACMS.

(14) "Portable document format" or "PDF" means a computer file format developed by Adobe Systems for reproducing a document in a manner that is independent of the application software, hardware, and operating system originally used to create the document.

40.2. VISCEFS Filing of Documents

(a) **Scope of Electronic Filing; Exemptions.**

(1) For all appeals and original proceedings in the Supreme Court, parties represented by an attorney must e-file all briefs, motions, petitions, and other documents electronically in accordance with the procedures of these Rules unless an exemption has been obtained pursuant to Rule 40.2(a)(3) or the Supreme Court has ordered that e-filing be disallowed in a particular case.

(2) Parties proceeding *pro se* who are not members of the Virgin Islands Bar may, but are not required to, e-file documents.

(3) Notwithstanding Rule 40.2(a)(1), the Clerk of the Supreme Court may, upon motion showing extraordinary circumstances, exempt an attorney from mandatory electronic filing or registration as a Filing User, either for purposes of a particular document or for an entire case. Motions for exemption from electronic filing in all cases shall be docketed as a separate original proceeding and assigned a miscellaneous case number, while motions for exemption from electronic filing in a particular case or with respect to a particular document shall be docketed as part of the case in which the exemption is being sought.

(4) Notwithstanding Rule 40.2(a)(1), all *ex parte* motions, such as motions to file a document under seal, must only be conventionally filed.

(b) **Persons Required or Eligible to Register as Filing Users**

(1) All attorneys regularly or specially admitted to practice before the Supreme Court, as well all applicants for regular admission, are required to register as Filing Users of the Supreme Court's VISCEFS system.

(2) A party to a pending appeal or original proceeding who is not represented by an attorney and who is not an attorney may, but is not required to, register as a Filing User in the VISCEFS system solely for purposes of that case. Filing User status will be terminated upon termination of the case, and a separate request for Filing User status must be made in each case in which the *pro se* party wishes to electronically file documents through the VISCEFS system. If a *pro se* party who has registered as a Filing User subsequently retains an attorney, the attorney must immediately advise the Clerk of the Supreme Court, who shall then terminate the party's Filing User status in that case.

(3) An attorney admitted *pro hac vice* in a particular matter may register as a Filing User in the VISCEFS system solely for purposes of that case. Filing User status will be terminated upon termination of the case, and a separate request for Filing User status must be made in each case in which the attorney is admitted *pro hac vice* and wishes to electronically file documents through the VISCEFS system. If an attorney admitted *pro hac vice* ceases to represent any of the parties in a case in which Filing User status has been obtained, the attorney must immediately advise the Clerk of the Supreme Court, who shall then terminate the attorney's Filing User status in that case. Supreme Court Rule 201(c)'s requirement that all pleadings filed by an attorney admitted *pro hac vice* be signed by local counsel shall be satisfied if an electronic filing contains the local attorney's electronic signature, as set forth in Rule 40.4, or contains a statement that the local attorney has reviewed and consented to the filing. In the event an attorney admitted *pro hac vice* chooses not to register as a Filing User, local counsel will be required to register as a Filing User and file all documents electronically unless an exemption has been obtained pursuant to Rule 40.2(a)(3) or the Supreme Court has ordered that e-filing be disallowed in that particular case.

(4) The Clerk of the Superior Court and his or her designees, as well as all court reporters

and transcribers, shall register as Filing Users in the VISCEFS system. Filing Users registered pursuant to this Rule 40.2(b)(4) may only e-file, as the case may be, the documents identified in Rules 40.3(j) and 40.3(k), and requests for extension of time or payment. When an individual registered as a Filing User pursuant to this Rule 40.2(b) ceases his or her employment with the Superior Court Clerk's Office or as a court reporter or transcriber, the Clerk of the Superior Court or Court Reporter Supervisor, as the case may be, must immediately advise the Clerk of the Supreme Court, who shall then terminate that individual's Filing User status.

(5) Required registration information shall include, at minimum, the registrant's name, bar number (if an attorney), one or more email addresses for service of process, a physical address, one or more telephone numbers and, if available, a fax number. In addition, every registrant must consent to electronic service in lieu of conventional service in all cases in which electronic filing is required or permitted. Additional registration requirements may be defined by the Supreme Court and may include training as a prerequisite to registration as a Filing User. Upon successful registration, the Clerk of the Supreme Court shall issue a user ID and password to the registrant. The user ID and password shall be used exclusively by the Filing User or, if the Filing User is an attorney, by the Filing User's assistant or staff member. A Filing User shall not knowingly permit a user ID or password to be used by anyone other than the Filing User and, if the Filing User is an attorney, the Filing User's assistant or staff member. Each Filing User shall safeguard his or her user ID and password and shall immediately notify the Clerk of the Supreme Court upon discovery or suspicion that the user ID and/or password security has been breached.

(c) **Consequences of Registration as Filing User**. As a prerequisite to registration as a Filing User, all individuals eligible to register as Filing Users must

(1) acknowledge that registration as a Filing User constitutes consent to electronic service of all documents;

(2) agree to protect the security of their passwords and immediately notify the Clerk of the Supreme Court if they learn that their password has been compromised;

(3) agree to immediately notify the Clerk of the Supreme Court if their contact information, including, but not limited to, their email address, has changed;

(4) certify that, prior to submitting any document for electronic filing, the Filing User shall make all required redactions and scan the document for viruses;

(5) agree to comply with these Rules and any other regulations established as a condition to use of the VISCEFS system, including, but not limited to, the prohibition against submitting excessive filings, either in terms of quantity or length.

(d) **Sanctions.**

(1) The Clerk of the Supreme Court may, at any time, with or without notice, suspend or terminate the electronic filing privileges of any Filing User who abuses the system.

(2) Notwithstanding Rule 40.2(d)(1), the Supreme Court may sanction any Filing User or other individual who makes use of the VISCEFS system for violating any provision of these Rules or for abusing the VISCEFS system.

40.3. Procedures for Electronic Filing

(a) **Electronic Transmission Constitutes Filing.** Electronic transmission of a document through VISCEFS to the VIACMS system consistent with these Rules, together with the

transmission of a Notice of Electronic Filing from the Clerk of the Supreme Court, constitutes filing of the document and entry of the document on the docket of the VIACMS kept by the Clerk of the Supreme Court under Rule 35(b). If the Supreme Court requires a party to file a motion for leave to file a document, both the motion and document at issue should be submitted electronically; the underlying document will be accepted if the Supreme Court so directs.

(b) **Timeliness of E-Filed Documents.** Documents e-filed to the Supreme Court must be transmitted on or before 11:59 p.m., Atlantic Standard Time, to be considered timely filed that day.

(c) **Format and Style of E-Filed Documents.**

(1) **File Format.** Before e-filing a document with the Supreme Court, an e-filer must verify its legibility and completeness. It is preferred that documents created by the e-filer already be in PDF format prior to electronic filing. A document created with a word processor using Microsoft Word or WordPerfect will be converted to PDF format by the Supreme Court's VISCEFS system when electronically filed with the Court. However, scanned documents, except for those in TIFF and JPEG format, as well as documents created with other word processors, must be converted to PDF format by the e-filer before they are electronically filed with the Supreme Court.

(2) **Style and Binding Requirements.** The provisions of Rule 15(a), which prescribe the color of covers for briefs and appendices and how briefs, appendices, motions, and other paper documents are to be bound, shall not apply to documents filed electronically, but shall remain in effect for paper copies of those documents.

(d) **Multiple Documents as Single Filing Prohibited.** E-filers are expressly prohibited from e-filing multiple motions, petitions, or other documents as a single filing or docket entry in the VIACMS system. For example, an e-filer may not combine a motion for extension of time to file a brief with a motion for a limited remand, or combine a motion to dismiss with an opposition to a motion for expedited appeal. Failure to comply with this Rule may result in rejection of the combined document by the Supreme Court.

(e) **Attachments and Exhibits to Motions, Petitions, and Other Filings**

(1) Notwithstanding Rule 40.3(d), an e-filer must submit, in PDF format, all documents referenced as exhibits or attachments to a motion, petition, or other filing. Such exhibits or attachments must be filed as multiple documents submitted with the motion, petition, or filing in which they are referenced as part of the same docket entry. An e-filer must submit as exhibits or attachments only those excerpts of the referenced documents that are directly germane to the matter under consideration by the Supreme Court. Excerpted material must be clearly and prominently identified as such. The Supreme Court may require parties to file additional excerpts or the complete document.

(2) The size of a single document submitted to the VISCEFS system cannot exceed twenty-five megabytes, but a Filing User may submit multiple documents as part of a single filing.

(3) Those exhibits and attachments that cannot be submitted in PDF format, or are not legible when scanned or converted to PDF format, shall be forwarded to the Supreme Court and to all parties in the case in paper form within twenty-four hours of the date the motion, petition, or other document is e-filed by the e-filer, unless the day following the filing date for the motion, petition, or other filing is a Saturday, Sunday, or legal holiday, in which event the exhibit or attachment shall be forwarded no later than the end of the next

day that is not a Saturday, Sunday, or legal holiday. Regular mail of the United States Postal Service is a sufficient means for delivering paper copies of exhibits and attachments pursuant to this Rule. A notice regarding the e-filer's inability to electronically submit the exhibit or attachment shall be filed electronically, and shall also accompany all copies of the motion, petition, or other filing that are served on the parties, regardless of whether the motion, petition, or other filing is served on the party electronically or in paper form. Upon final disposition of the proceeding, the Supreme Court may dispose of all copies of paper exhibits and attachments that were not e-filed with the principal motion, petition, or other filing.

(f) **E-Document as Official Record.** After an e-document has been filed electronically, the official record is the e-document stored by the VIACMS, and the filing party is bound by the e-document as filed. An e-document filed is deemed filed at the date and time stated on the Notice of Electronic Filing from the Supreme Court.

(g) **Electronic Versions of Previously-Filed Paper Documents.** Upon the Supreme Court's request, a Filing User must promptly provide the Clerk of the Supreme Court, in a format designated by the Supreme Court, an identical electronic version of any paper document previously filed in the same appeal or original proceeding by that Filing User.

(h) **Paper Copies of E-Documents.** In addition to electronically filing a brief or appendix with the VISCEFS system, seven paper copies of briefs and four paper copies of the appendices must be filed with the Clerk of the Supreme Court for the convenience of the Supreme Court within three days of the electronic transmission of the e-document. No paper copies of motions, petitions, or other documents need be filed unless otherwise required by these Rules or directed by the Clerk of the Supreme Court.

(i) **Rejection of E-Documents.** Both the Supreme Court and the Clerk of the Supreme Court may reject any e-document, including the e-record, for failure to comply with this Rule 40. Upon rejection of an e-document, the Supreme Court or the Clerk of the Supreme Court shall notify the e-filer as well as all other parties to the action. Such notice shall state the reason or reasons for the rejection, as well as the amount of time, if any, within which the e-filer may file and serve a corrected e-document. If the notice does not specify the time in which a corrected e-document may be filed, the e-filer shall be deemed to have seven days from service of the notice of the rejection to file and serve a corrected e-document.

(j) **Clerk of the Superior Court's Duty to Transmit E-Record.**

(1) The Clerk of the Superior Court shall e-file the e-record with the Clerk of the Supreme Court within ten days from the date the last reporter's transcript is filed with the Clerk of the Superior Court, or, in the event there is no reporter's transcript, within twenty-eight days from the filing of the notice of appeal, unless the time is shortened or extended by an order of the Supreme Court.

(2) The e-record shall be assembled with the cover page first, followed by the order or judgment appealed from, the certified docket entries, any court reporter transcripts that have not been e-filed pursuant to Rule 40.3(k), all other documents that constitute the record, and a certificate of completion and transmittal and the Clerk of the Superior Court's index to the entire record. The Clerk of the Superior Court's index shall include an index to the documents that are contained in the e-record and an index to the documents incapable of being legibly reproduced in an electronic format. Unless otherwise ordered by the Supreme Court, the Clerk of the Superior Court shall retain custody of all documents

incapable of being legibly reproduced in an electronic format, and the Clerk of the Superior Court shall allow all attorneys and parties proceeding *pro se* to access such documents while preparing their briefs.

(3) Paper copies of the documents constituting the e-record or the original file shall not be transmitted by the Clerk of the Superior Court unless during the pendency of the appeal the Clerk of the Supreme Court directs that designated parts of the record be transmitted.

(4) Notwithstanding Rule 40.3(j)(2), the Supreme Court may request that the Clerk of the Superior Court supplement the e-record by e-filing additional portions of the record in order to address a motion or the issues on appeal.

(k) **Court Reporter's Duty to E-File Transcripts.** In accordance with Rule 10(b) and 11(b), the court reporter shall immediately e-file Part II of the TPO with the Supreme Court after receiving Part I of the TPO from the party requesting the transcript, and, once the necessary financial and other arrangements have been satisfied, shall file physical and electronic versions of all transcripts with the Clerk of the Superior Court and e-file Part III of the TPO with the Clerk of the Supreme Court.

(l) **Notice of Entry of Court-Issued Documents.** Unless otherwise provided for in these Rules or by internal court procedures, the Clerk of the Supreme Court shall electronically serve all orders, decrees, judgments, and other court-issued documents (except those issued under seal) on parties who are Filing Users through the VISCEFS or, if the VISCEFS does not yet have this functionality, by sending an email to the most recent email address provided by the Filing User.

(m) **Docket or Text-Only Orders.** An order, but not a final judgment or decree, may be issued by the Supreme Court as a text-only entry on the docket, without an attached document. Such entry shall include the justice or Clerk's electronic signature. The justice or Clerk's electronic signature is valid for all purposes as official and binding on the parties.

40.4. Electronic Signatures

(a) The user ID and password required to submit documents to the VISCEFS system serve as the Filing User's signature on all electronic documents filed with the court. They also serve as a signature for purposes of these Rules, and any other purpose for which a signature is required in connection with proceedings before the Supreme Court. No Filing User or other person may knowingly permit or cause to permit a Filing User's user ID and password to be used by anyone other than an authorized agent of the Filing User.

(b) When e-filing any document, the name of the e-filer must be preceded by an "/s/" and typed in the space where the signature would otherwise appear, which will constitute the e-filer's electronic signature. Alternatively, a scanned hand-written signature may be used as an electronic signature.

(c) Documents requiring signatures of more than one party must be electronically filed either by:

(1) submitting a scanned document containing all necessary signatures;

(2) submitting a statement representing the consent of all the other parties on the document;

(3) identifying on the document the parties whose signatures are required and submitting a notice of endorsement by the other parties no later than three business days after filing; or

(4) in any other manner approved by the Supreme Court.

Documents that are electronically filed and require original signatures other than that of the e-filer must be maintained in paper form by the Filing User until two years

after the issuance of the mandate or order closing the case, whichever is later. If an attorney receives permission to withdraw and a new attorney enters an appearance, documents that require original signatures must be transferred to the new attorney of record. On request of the Supreme Court, an e-filer must provide original documents for review.

(d) Electronically represented signatures of all parties and Filing Users as described in this Rule 40.4 are presumed to be valid signatures. If any party, attorney of record, Filing User, or any other individual objects to the representation of his or her signature on an electronic document, he or she must, within fourteen calendar days, file a notice setting forth the basis of the objection.

40.5. Technical Failures and Difficulties Caused by Technology

If a Filing User misses a filing deadline as the result of an inability to e-file a document as a result of difficulty caused by technology occurring on the deadline date for filing the document, the Filing User must, no later than the first day on which the Supreme Court is open for business following the deadline date for filing the document, file the document accompanied by a motion to accept the document as timely filed. The motion shall include a declaration stating the reason or reasons for missing the deadline and stating why the document should be accepted as timely filed. If the Supreme Court grants the motion to accept the document as timely filed, the document shall be deemed timely filed on the date the Supreme Court grants the motion, notwithstanding any statute or Supreme Court rule to the contrary. The Supreme Court will not accept the document as filed on the deadline date if it is not accompanied with a motion to accept the document as timely filed or if it is filed after the first day on which the Supreme Court is open for business following the deadline date.

40.6. Public Access to Electronic Case Files

(a) The Clerk of the Supreme Court shall provide public access to the dockets and documents of all cases maintained in VIACMS through public computers; provided, however, that the Clerk of the Supreme Court shall restrict access to confidential, sealed, or otherwise restricted dockets and documents maintained in VIACMS consistent with Rule 40.6(d).

(b) The Supreme Court shall provide internet access to the dockets of VIACMS cases (excluding those that are sealed, confidential, or otherwise restricted) without cost. The Supreme Court may, but is not required to, provide internet access to confidential, sealed, or otherwise restricted records to parties and attorneys entitled thereto consistent with Rule 40.6(d).

(c) Filing Users shall protect personal information in public records and documents by making the redactions required by Rule 15(c).

(d) Unless otherwise provided in these Rules or by court order:

(1) If a case is designated as confidential in VIACMS, members of the public may view the docket entries for the case, but only the attorneys and unrepresented parties (if registered as Filing Users) may view the documents in the case through VIACMS.

(2) If a case is designated as sealed in VIACMS, neither the docket entries nor the documents associated with the case may be viewable by the public, the attorneys, or the parties through VIACMS.

40.7. Authority of Clerk

(a) The Clerk of the Supreme Court is authorized to issue notices, guidelines, user guides, and the like that provide clarification or assistance to facilitate electronic filing. Such clarification or assistance may be made available on the Supreme Court's website.

(b) Notwithstanding Rules 2, the Clerk of the Supreme Court is authorized to temporarily suspend or modify any portion of this Rule 40, including imposing additional registration requirements or suspending Rule 40.2's mandatory electronic filing requirements, in order to respond to a technical failure, a security breach, or otherwise further the interests of justice.

Rule 41. Masters.

(a) **Appointment; Powers.** The Supreme Court may appoint a special master to hold hearings, if necessary, and to recommend factual findings and disposition in matters ancillary to proceedings in the Supreme Court. Unless the order referring a matter to a master specifies or limits the master's powers, those powers include, but are not limited to, the following:

(1) regulating all aspects of a hearing;

(2) taking all appropriate action for the efficient performance of the master's duties under the order;

(3) requiring the production of evidence on all matters embraced in the reference; and

(4) administering oaths and examining witnesses and parties.

(b) **Compensation**. If the master is not a judge or court employee, the Supreme Court must determine the master's compensation and whether the cost is to be charged to any party.

EXHIBIT 4

VIRGIN ISLANDS SUPREME COURT RULE 210
(as amended)

RULES GOVERNING THE APPOINTMENT OF COUNSEL TO REPRESENT INDIGENT PARTIES ON APPEAL

The Supreme Court of the Virgin Islands, in order to effectuate the provisions of 5 V.I.C. § 3503, adopts the following procedure to provide and secure adequate representation on appeal for any person who is financially unable to employ counsel.

210.1 Panels of Attorneys

(a) *Establishment of Attorney Panel*. The Clerk of the Supreme Court, at the direction of the Supreme Court and under the supervision of the Chief Justice, shall prepare and maintain a panel of regularly-admitted members of the Virgin Islands Bar who are eligible to practice law in the Virgin Islands and who have volunteered, been recommended, or otherwise selected to provide representation to indigent defendants on a recurring basis.

(b) *Selection of Attorneys to Serve on Panels*. The Chief Justice may add or remove attorneys from panel at any time as he or she sees fit, based on the qualifications and availability of those attorneys and subject to review by the entire Supreme Court. The Clerk of the Supreme Court shall accept applications and receive recommendations for designation to the panel, and submit these names to the Chief Justice for consideration and final approval. The attorneys designated on the panel may be identified by Judicial Division of the Superior Court to facilitate appointments to cases originating in either Judicial Division.

(c) *Absence or Insufficiency of Attorney Panels*. In the event a panel has not been established, or the number of attorneys who have voluntarily applied to join the panel is insufficient to provide adequate representation to all litigants eligible for court-appointed counsel on appeal, the Clerk is authorized to appoint, on a rotating basis, any regularly-admitted member of the Virgin Islands Bar who is eligible to practice law in the Virgin Islands.

(d) *Docketing of Application*. An attorney may apply for an appointment to the attorney panel by submitting an application, on a form prepared by the Clerk of the Supreme Court, and filing it with the Clerk. Each application shall be docketed as a separate original proceeding, assigned a miscellaneous case number, and be designated as confidential for purposes of Supreme Court Rule 40.6. The Chief Justice shall, by order, grant or deny the application.

210.2 Determination of Need for Appointed Counsel

(a) *Generally*. In every direct criminal or quasi-criminal appeal, whether undertaken by a defendant or the government, a defendant who has been granted permission to proceed *in forma pauperis* pursuant to Supreme Court Rule 3(b) and 4 V.I.C. § 513 is eligible to have counsel appointed for him or her by the Supreme Court. If a defendant has not moved to proceed *in forma pauperis* on appeal and does not appear to be represented by

counsel, the Clerk of the Supreme Court shall promptly notify the defendant that he or she has a right to be represented by counsel and that the Court will appoint counsel to represent him or her if the defendant files, and the Court grants, a motion to proceed *in forma pauperis*.

(b) *Continuation of In Forma Pauperis Status.* Pursuant to Supreme Court Rule 3(c), a criminal defendant who has received permission to proceed *in forma pauperis* in the Superior Court may continue to proceed *in forma pauperis* in the Supreme Court, and remain eligible for appointment of counsel in the Supreme Court, without filing a new motion to proceed *in forma pauperis*, provided that the defendant's financial circumstances have not changed.

(c) *Continued Inquiry Permitted*. At any time after granting *in forma pauperis* status, allowing *in forma pauperis* status to continue, or appointing counsel, the Supreme Court may inquire into a defendant's financial status to determine whether the defendant continues to meet the requirements for *in forma pauperis* status or otherwise remains financially unable to employ counsel. Should an attorney appointed to represent a defendant discover, during the course of that representation, that the defendant is financially able to pay for his own legal representation, court-appointed counsel shall, notwithstanding any rule to the contrary, promptly notify the Court of this fact.

(d) *Appointment Authorized When in the Interests of Justice*. Notwithstanding Rule 210.2(a) or any other court rule, the Supreme Court may, at its sole discretion, appoint an attorney to represent a litigant in any matter, whether criminal or civil, if it determines that appointment of an attorney is required in the interests of justice.

210.3 Appointment of Counsel

(a) *Continuation of Superior Court Representation*. Any attorney ordered to represent a defendant in the Superior Court pursuant to 5 V.I.C. § 3503 shall continue to represent that litigant on appeal unless expressly relieved by order of the Superior or Supreme Court. After proceedings in the Superior Court have concluded, the Superior Court may not grant any court-appointed attorney permission to withdraw as counsel until it has ascertained that a notice of appeal has been filed <u>in the Supreme Court</u> on the litigant's behalf or that the litigant has chosen not to file a notice of appeal despite being made aware of the right to appeal. In the event the Superior Court has granted an attorney permission to withdraw after a notice of appeal has been filed, the Superior Court and the attorney who has been granted permission to withdraw shall immediately notify the Supreme Court of the fact and the need to appoint an attorney to represent the litigant on appeal.

(b) *Appointments by Supreme Court*. In those cases in which the Supreme Court must make an appointment in the first instance, or in which it becomes necessary to appoint a new attorney to represent a litigant on appeal, the Clerk of the Supreme Court shall appoint the Office of the Territorial Public Defender to represent the litigant. In the event the Office of the Territorial Public Defender is disqualified or is authorized by the Chief Justice or the Supreme Court to withdraw its representation of the litigant, the Clerk of the Supreme Court shall, at the direction of the Supreme Court and under the supervision of the Chief Justice, appoint on a rotating basis an attorney from the panel established pursuant to Supreme Court Rule 210.1(a) or, if such an appointment is not possible,

appoint an attorney from the full list of regularly-admitted attorneys pursuant to the procedure provided for in Supreme Court Rule 210.1(c). For the convenience of court-appointed counsel and the defendant, the Clerk may, but is not required to, appoint an attorney from the panel who resides in the same Judicial Division of the Superior Court in which the case originated. Selection of court-appointed counsel shall be the sole and exclusive responsibility of the Supreme Court, and no defendant entitled to court-appointed representation shall be permitted to select the attorney appointed to represent him.

(c) *Multiple Court-Appointed Attorneys Prohibited*. Absent a determination by the Supreme Court that a case is exceptionally complex, only a single attorney may be appointed to represent a single defendant.

(d) *Substitution of Counsel*. The Supreme Court may, on its own motion or by motion of court-appointed counsel, substitute one court-appointed counsel for another.

(e) *Privately Retained Counsel*. Privately retained counsel representing the defendant in the Superior Court may, upon a finding by the Supreme Court that the defendant now qualifies for *in forma pauperis* status and has become financially unable to pay counsel whom he has previously retained, be eligible for an appointment to serve as the defendant's court-appointed appellate counsel. Such appointments may be, but are not required to be, made retroactive to include any representation in the Supreme Court furnished prior to the appointment. If a litigant is unable to pay privately retained counsel and privately retained counsel does not desire an appointment to serve as the litigant's court-appointed appellate counsel, privately retained counsel nevertheless possesses an obligation to continue to represent the litigant and safeguard the litigant's rights, including filing a notice of appeal in the ~~Superior~~Supreme Court and a motion to proceed *in forma pauperis* and for appointment of counsel in the Supreme Court, until new appellate counsel is appointed. Notwithstanding privately retained counsel's wish to not continue representation as a litigant's court-appointed counsel, the Supreme Court reserves the right to order privately retained counsel to continue to represent the litigant on appeal.

(f) *Cases Involving Multiple Defendants*. In appeals of cases involving more than one defendant, one or more attorneys may be appointed to represent all defendants on appeal, but where circumstances warrant—such as conflicting interests of different defendants—separate attorneys may be appointed to represent each defendant.

(g) *Duty to File and Prosecute Petition for Writ of Certiorari*. If, after an adverse decision by this Court, the defendant seeks to file a petition for writ of certiorari, court-appointed counsel shall prepare a petition for writ of certiorari and other necessary and appropriate documents in connection therewith, and shall otherwise continue to represent the defendant subject to the rules promulgated by the court to which certiorari is sought.

(h) *Remands to Superior Court*.

(1) If the Supreme Court, after reversing or affirming a decision of the Superior Court, remands the matter for further proceedings in the Superior Court, court-appointed counsel shall possess a duty to continue to represent the defendant in the Superior Court until expressly relieved by order of the Superior Court.

(2) In the event the Supreme Court holds an appeal in abeyance pending a limited remand to the Superior Court, court-appointed counsel possesses a duty to continue to represent the defendant in those proceedings. During such a limited remand, only the

Supreme Court shall have jurisdiction to grant a court-appointed attorney permission to withdraw as counsel.

210.4 Payment of Appointed Counsel

(a) *Compensation and Reimbursement*. Counsel appointed to represent a defendant in this Court pursuant to Supreme Court Rule 210.3 shall be compensated at the rates set forth in "Addendum A" to this Rule, which the Supreme Court may change from time to time, and may receive reimbursement for expenses reasonably incurred pursuant to that representation.

(b) *Final Payment*. No later than ninety (90) days of the date the Supreme Court issues its final order or opinion, court-appointed counsel may submit a claim for compensation and reimbursement, using forms prepared and furnished by the Clerk of the Supreme Court. All claims for final payment must, at a minimum, include a written statement specifying the time expended, services rendered, and expenses incurred while the case was pending in the Supreme Court.

(c) *Interim Payment Prohibited*. Interim payments to court-appointed counsel, absent permission of the Chief Justice, are expressly prohibited. Permission for interim payment shall not be granted unless court-appointed counsel has made a strong showing that extraordinary circumstances warrant an interim payment in a particular matter.

(d) *Disallowed Compensation and Reimbursement*. Court-appointed counsel may not be compensated or reimbursed for

(1) work performed by, or consultations with, other attorneys, paralegals, administrative assistants, law clerks, investigators, consultants, or other professionals unless court-appointed counsel sought, and obtained, permission from this Court to utilize such individuals; or

(2) activities adverse to the interests of the defendant or that are not necessary to providing full and fair representation to the defendant, including, but not limited to, motions to withdraw as counsel, motions for extension of time, motions for leave to file out of time, and time spent preparing court-appointed counsel's request for payment.

(e) *Reasonableness of Payment Request*. Pursuant to 5 V.I.C. § 3503, all payments to court-appointed counsel must be reasonable. At all times, the burden of establishing that a request for compensation and reimbursement is reasonable remains with court-appointed counsel. Except for requests for final payment that may be reviewed by the Clerk of the Supreme Court pursuant to Supreme Court Rule 210.4(f), the Chief Justice shall determine the reasonableness of any claim for payment or, at his or her discretion, may refer the matter to the entire Supreme Court. Absent a showing that a matter is unusually complex or novel, claims for final payment exceeding the maximum amounts set forth in "Addendum A" are presumptively unreasonable.

(f) *Authority of Clerk to Approve or Reject Final Payment*. The Clerk of the Supreme Court may approve or reject any claim for final payment that does not exceed the maximum amounts set forth in "Addendum A," inclusive of any interim payments previously authorized. Upon motion of court-appointed counsel, the Chief Justice may review any decision entered by the Clerk pursuant to this Rule.

(g) *Issuance of Payment*. Upon approval by the Clerk or the Chief Justice, as the case may

be, the Clerk shall forthwith forward all approved claims to the Office of the Administrative Director of the Supreme Court for payment. In the event a claim for payment has been rejected, payment shall not issue until court-appointed counsel has submitted—and the Clerk or the Chief Justice, as the case may be, has approved—a new request for compensation and reimbursement curing the deficiencies that resulted in rejection of the last request for payment.

(h) *Exclusive Payment*. Any payments authorized pursuant to this Rule shall be the sole compensation afforded to a court-appointed appellate attorney. Under no circumstances may a court-appointed attorney request or accept any payment or promise of payment for representation of a litigant. Any court-appointed attorney suspected of requesting or accepting any payment in violation of this provision may be referred to the appropriate Subcommittee of the Ethics & Grievance Committee of the Virgin Islands Bar for further investigation and, if appropriate, a formal disciplinary proceeding.

(i) *Proceedings in Other Courts*. Any court-appointed attorney who files and prosecutes a petition for writ of certiorari in the United States Court of Appeals for the Third Circuit or the Supreme Court of the United States pursuant to Supreme Court Rule 210.3(g), or who represents the defendant in subsequent Superior Court proceedings pursuant to Supreme Court Rule 210.3(h), shall be compensated by and pursuant to the rules governing proceedings in those courts.

(j) *Territorial Public Defender*. The Supreme Court shall not, as part of its own budget, compensate or reimburse the Office of the Territorial Public Defender for any expenses associated with its representation of a litigant, including the costs of transcripts in the trial court.

(k) *Docketing of Compensation Request*. A court-appointed attorney may seek an interim or final payment by submitting an application, on a form prepared by the Clerk of the Supreme Court, and filing it with the Clerk along with the written statement required by Rule 210.4(b). Each application shall be docketed as a separate original proceeding, assigned a miscellaneous case number, and be designated as confidential for purposes of Supreme Court Rule 40.6. An application for payment under this Rule 210.4 need not be served on counsel to any other party in the underlying Supreme Court proceeding. The Clerk or the Chief Justice, as the case may be, shall accept, reject, or modify the payment request by order.

210.5 Forms and Reports

(a) *Standard Forms*. The Clerk of the Supreme Court shall, in corroboration with the Office of the Administrative Director of the Supreme Court, prepare standardized forms, including forms to proceed *in forma pauperis* and for final payment of court-appointed counsel, which, upon approval by the Supreme Court, may be used by litigants and attorneys.

(b) *Reports*. The Clerk of the Supreme Court shall submit reports on the appointment of counsel under this Rule to the Office of the Administrative Director of the Supreme Court, in such form and at such times as the Administrative Director of the Supreme Court, the Clerk of the Supreme Court, or the Chief Justice may specify.

ADDENDUM "A"

TABLE TO GOVERN COMPENSATION AND REIMBURSEMENT OF COURT-APPOINTED APPELLATE COUNSEL IN SUPREME COURT PROCEEDINGS

(effective October 1, 2010)

MAXIMUM HOURLY RATES (All Cases)	
Hours in Court	$75.00
Hours Out of Court	$75.00
MAXIMUM FINAL PAYMENT (inclusive of all compensation, reimbursement, and interim payment)	
First Degree Murder	$7,500.00
All Other Cases	$5,000.00