

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

**IN RE:** ) **PROMULGATION No. 2019-007**  
 )  
**AMENDMENTS TO THE VIRGIN** )  
**ISLANDS RULES OF CIVIL** )  
**PROCEDURE, CRIMINAL** )  
**PROCEDURE, AND EVIDENCE.** )  
\_\_\_\_\_ )

**ORDER OF THE COURT**

**THIS MATTER** is before the Court pursuant to transmittals from the Advisory Committee on Rules, dated January 31, 2019 and February 27, 2019, which recommend several amendments to the Virgin Islands Rules of Civil Procedure, the Virgin Islands Rules of Criminal Procedure, and the Virgin Islands Rules of Evidence. Accordingly, it is hereby

**ORDERED** that Rule 4 of the Virgin Islands Rules of Civil Procedure **SHALL BE AMENDED** to re-designate Rule 4(i)(4) as Rule 4(i)(5), and to insert the following new language as Rule 4(i)(4):

**(4) Suits Based on Legislative or Judicial Branch Actions.** In any lawsuit based upon any action, conduct or activity of the Legislative or Judicial Branches of the Government, the Executive Director of the Legislature or the Administrator of Courts shall be personally served with a summons and a copy of the complaint.

It is further

**ORDERED** that Rule 6-1(e)(2) of the Virgin Islands Rules of Civil Procedure **SHALL BE AMENDED** to strike all existing language in its entirety and to replace it with the following new language:

(2) Unless otherwise ordered by the court, all motions, responses and replies filed with the court shall not exceed the greater of 20 pages or 6,000 words in length unless leave of court has been obtained in advance for a longer submission. This page or word limit does not include any cover page, caption, table of contents, table of authorities, appendices or exhibits, the statements of undisputed or disputed facts as provided in Rule 56(c), and certificates of service.

It is further

**ORDERED** that Rule 6-1(g)(3) of the Virgin Islands Rules of Civil Procedure **SHALL BE AMENDED** to strike all existing language in its entirety and to replace it with the following new language: “Time periods and other requirements for opposition and reply papers in motions for summary judgment shall be as provided in Rule 56.” It is further

**ORDERED** that Rule 15-1(c)(2) of the Virgin Islands Rules of Civil Procedure **SHALL BE AMENDED** to insert the following phrase in front of the existing language: “Except as provided in Rule 15,”. It is further

**ORDERED** that Rule 56(c) of the Virgin Islands Rules of Civil Procedure **SHALL BE AMENDED** to strike all existing language in its entirety and to replace it with the following new language, along with the accompanying Note:

**(c) Procedures.**

**(1) *Support; Statement of Specific Undisputed Facts.*** Each summary judgment motion shall include a statement of undisputed facts in a separate section within the motion. Each paragraph stating an undisputed fact shall be serially numbered and each shall be supported by affidavit(s) or citations identifying specifically the location(s) of the material(s) in the record relied upon regarding such fact. This section shall not count towards the 20 page or 6000 words limitation for such motions.

**(2) *Opposition; Statement of Disputed Facts.***

(A) *Time for Response.* Any party adverse to a motion filed under this Rule may file a brief in opposition, any affidavits desired and/or other documents relied upon in opposition to the motion, within 30 days of the filing of the motion.

(B) *Response to Undisputed Facts.* A party opposing entry of summary judgment must address in a separate section of the opposition memorandum each of the facts upon which the movant has relied pursuant to subpart (c)(1) of this Rule, using the corresponding serial numbering, either

(i) agreeing that the fact is undisputed for the purpose of ruling on the motion for summary judgment only; or

(ii) stating that the fact is disputed and providing affidavit(s) or citations identifying specifically the location(s) of the material(s) in the record relied upon as evidence relating to each such material fact, by number.

(C) *Optional Identification of Additional Facts.* In addition, a party opposing summary judgment may, if it elects to do so, state additional facts that the party

contends are disputed and material to the motion for summary judgment, presenting one or more genuine issues to be tried. The party shall supply affidavit(s) or citations specifically identifying the location(s) of the material(s) in the record relied upon as evidence relating to each such material disputed fact, by number. This section shall not count towards the 20 page limitation for such opposition memorandum.

**(3) Reply by Party Moving for Summary Judgment.** Any reply by the movant to the opposition by the non-moving party shall be filed within 14 days after the filing of the brief in opposition to summary judgment. If the non-moving party has identified additional facts as being material and disputed, as provided in subpart (c)(2)(C) of this Rule, the moving party shall respond to these additional facts by filing a response using the corresponding serial numbering of each such fact identified by the non-moving party and either

(A) agreeing that the additional fact is disputed for the purpose of ruling on the motion for summary judgment only; or

(B) stating that particular numbered facts are undisputed and providing affidavit(s) or citations identifying specifically the location(s) of the material(s) in the record relied upon as evidence relating to each such material fact, by number.

This section shall not count towards the 20 page or 6000 words limitation for such replies.

#### *Notes*

**Subsection (c).** *After discussions in 2016 and 2017, the Advisory Committee on Rules of Court has again discussed, at its March 2018 meeting, the failure of present Rule 56 to adequately elicit statements of undisputed and disputed facts that prove very helpful in the fair disposition of summary judgment motions, and help focus the parties and the court on key items which either do or do not present triable issues that would prevent summary adjudication. The proposed revisions set forth in this recommendation to the Supreme Court take several steps to provide improvements that are balanced – not requiring any specific formats, or elaborate tables, or submission of proofs, yet requiring submission of either affidavit support or record citations to document the party’s representations that a given fact is undisputed or disputed.*

*In subpart (c)(1) the revised Rule requires a movant to include a discrete section of the moving papers that states undisputed facts individually, and numbers them. Each must be supported by affidavit or by citations “identifying specifically the location(s) of the material(s) in the record relied upon regarding such fact.” Similarly subpart (c)(2) will require the opposing party to respond to the movant’s stated facts, also in a separate section of the opposition papers, either agreeing that certain of the numbered facts relied upon by the movant are undisputed for the purpose of ruling on the motion for summary judgment only,*

*or stating that such fact or facts are disputed, providing affidavits or citations to materials in the record that relate to such facts, by number.*

*Subpart (c)(2) does not require an opposing party to do anything more – but it provides that the opposing party, if it elects to do so, may file a statement of “additional facts that the party contends are disputed and material to the motion for summary judgment, presenting one or more genuine issues to be tried.” The dispute about such facts must be supported by the same sort of affidavit or record citations required of the movant.*

*Subpart (c)(3) addresses any reply the movant may file, which – among other things – must respond to any “additional disputed facts” the non-moving party has identified in the opposition papers, either agreeing that the additional fact is disputed for the purpose of ruling on the motion for summary judgment only, or stating that particular numbered facts are undisputed and providing affidavit or record citation support for that claim.*

It is further

**ORDERED** that Rule 62 of the Virgin Islands Rules of Civil Procedure **SHALL BE AMENDED** by striking and inserting language as indicated:

**Rule 62. Stay of Proceedings to Enforce a Judgment**

**(a) Automatic Stay; Exceptions for Injunctions and Receiverships.** Except as provided in Rule 62(c) and (d), a judgment and proceedings stated in this rule, no execution may issue on a judgment, nor may proceedings be taken to enforce it are stayed for 30 until 14 days have passed after its entry: But unless the court orders otherwise, an interlocutory or final judgment in an action for an injunction or a receivership is not stayed after being entered, even if an appeal is taken.

~~**(b) Stay Pending the Disposition of a Motion.** On appropriate terms for the opposing party's security, the court may stay the execution of a judgment — or any proceedings to enforce it — pending disposition of any of the following motions:~~

- ~~(1) under Rule 50, for judgment as a matter of law;~~
- ~~(2) under Rule 52(b), to amend the findings or for additional findings;~~
- ~~(3) under Rule 59, for a new trial or to alter or amend a judgment; or~~
- ~~(4) under Rule 60, for relief from a judgment or order.~~

**(b) Stay with Bond or Other Security on Appeal.** At any time after judgment is entered, a party may obtain a stay by providing a bond or other security. supersedeas bond, except in an action described in Rule 62(a). The bond may be given upon or after filing the notice of appeal or after obtaining the order allowing the appeal. The stay takes effect when the court approves

the bond or other security, and remains in effect for the time specified in the bond or other security..

**(c) Stay of an Injunction or Receivership.** Unless the court orders otherwise, an interlocutory or final judgment in an action for an injunction or receivership are not stayed after being entered. While an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies an injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights.

**(d) Injunction Pending an Appeal.** While an appeal is pending from an interlocutory order or final judgment that grants, continues, modifies, refuses, dissolves, or refuses to dissolve or modify ~~denies~~ an injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights.

**(e) Stay Without Bond on an Appeal by the Government of the United States Virgin Islands, Its Officers, or Its Agencies.** The Government of the Virgin Islands is exempt from bonds, undertakings, and security, to the extent provided by 5 V.I.C. § 1141.

**(f)** [Reserved.]

**(g) Supreme Court's Power Not Limited.**

This rule does not limit the power of the Supreme Court of the Virgin Islands or the Chief Justice, under V.I. R. App. P. 8 and other provisions of Virgin Islands law:

(1) to stay proceedings -- or suspend, modify, restore, or grant an injunction -- while an appeal is pending; or

(2) to issue an order to preserve the status quo or the effectiveness of the judgment to be entered.

**(h) Stay with Multiple Claims or Parties.** A court may stay the enforcement of a final judgment entered under Rule 54(b) until it enters a later judgment or judgments, and may prescribe terms necessary to secure the benefit of the stayed judgment for the party in whose favor it was entered.

It is further

**ORDERED** that Rule 62 of the Virgin Islands Rules of Civil Procedure **SHALL BE AMENDED** by striking and inserting language as indicated:

**Rule 65.1. Proceedings Against a Security Provider Surety**

Whenever these rules require or allow a party to give security, and security is given ~~through a bond or other undertaking~~ with one or more security providerssureties, each provider-surety submits to the court's

jurisdiction and irrevocably appoints the clerk of court as its agent for receiving service of any papers that affect its liability on security. ~~the bond or undertaking.~~ The security provider's ~~surety's~~ liability may be enforced on motion without an independent action. The motion and any notice that the court orders may be served on the clerk of court, who must promptly send mail a copy of each to every surety whose address is known.

It is further

**ORDERED** that Rule 40-1(e)(3) of the Virgin Islands Rules of Criminal Procedure **SHALL BE AMENDED** to strike the existing language in its entirety and replace it with the following new language: “(3) Following waiver, if the defendant is not released, the defendant shall be ordered to return to the jurisdiction from which the defendant is a fugitive in accord with the provisions of 5 V.I.C. § 3815 and § 3817.” It is further

**ORDERED** that Rule 803(16) of the Virgin Islands Rules of Evidence **SHALL BE AMENDED** to strike the existing language in its entirety and replace it with the following new language: “(16) **Statements in Ancient Documents.** A statement in a document that was prepared before January 1, 1998, and whose authenticity is established.” It is further

**ORDERED** that Rule 902 of the Virgin Islands Rules of Evidence **SHALL BE AMENDED** to insert the following new language as Rules 902(13) and 902(14):

(13) **Certified Records Generated by an Electronic Process or System.** A record generated by an electronic process or system that produces an accurate result, as shown by a certification of a qualified person that complies with the certification requirements of Rule 902(11) or (12). The proponent must also meet the notice requirements of Rule 902(11).

(14) **Certified Data Copied from an Electronic Device, Storage Medium, or File.** Data copied from an electronic device, storage medium, or file, if authenticated by a process of digital identification, as shown by a certification of a qualified person that complies with the certification requirements of Rule 902(11) or (12). The proponent also must meet the notice requirements of Rule 902(11).

It is further

**ORDERED** that, pursuant Rule 37(a) of the Virgin Islands Rules of Appellate Procedure, the Bench, Bar, and the public **MAY FILE** comments with the Clerk of this Court no later than thirty (30) days from the date of entry of this Order. It is further

**ORDERED** that these amendments **SHALL GO INTO EFFECT on March 31, 2019**, unless modified as a result of comments submitted under Rule 37(a).

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

**SO ORDERED** this 28<sup>th</sup> day of February, 2019.

/s/ Ive Arlington Swan  
**IVE ARLINGTON SWAN**  
Associate Justice

/s/ Maria M. Cabret  
**MARIA M. CABRET**  
Associate Justice

/s/ Rhys S. Hodge  
**RHYS S. HODGE**  
Chief Justice

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