

# VIRGIN ISLANDS FAMILY RULES AND PROCEDURES

**October 17, 2018 Draft for Publication and Comment**

**NOTICE:** These draft rules have not been reviewed by the Advisory Committee on Rules of Court and have not been reviewed or approved by the Virgin Islands Supreme Court. They are being published in preliminary form, with permission of the Court, for comment by the Bench and Bar of the Virgin Islands.

**PLEASE SEND ALL COMMENTS AND SUGGESTIONS BY NOVEMBER 15, 2018 To the Advisory Committee on Rules of Court, c/o Professor Kent Sinclair at this e-mail address:**

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## Part A – General Rules

### **Rule 1 General Provisions.**

**(a) Scope and Purpose.** These rules govern the procedures in the Family Division of the Superior Court. They are intended to provide a just, speedy, and efficient determination of the procedures covered by them and shall be construed to secure simplicity in procedure and fairness in administration.

**(b) Application.** These rules apply to all actions concerning family matters, including injunctions for protection against domestic, repeat, dating, and sexual violence, stalking, except as provided in the Virgin Islands Rules of Criminal Procedure. “Family matters,” as used within these rules include, but are not limited to, matters arising from dissolution of marriage, annulment, support unconnected with dissolution of marriage, paternity, child support, an action involving a parenting plan for a minor child or children, proceedings for temporary or concurrent custody of minor, declaratory judgment actions related to premarital, marital, or postmarital agreements (except as otherwise provided, when applicable, by the Virgin Islands Probate Rules), injunctions for protection against domestic, repeat, dating, and sexual violence, and

stalking, and all proceedings for modification, enforcement, and civil contempt arising from these proceedings.

**(c) Purposes.** These rules are intended to facilitate access to the court and to provide procedural fairness to all parties, to save time and expense through active case management, facilitate the use of alternatives to litigation, and to enable the court to coordinate related cases and proceedings to avoid multiple appearances by the same parties on the same or similar issues and to avoid inconsistent court orders.

**(d) Title and Citation.** These rules shall be known as the Virgin Islands Family Rules and Procedures and may be cited in short form as V.I.Fam.R.P.

**(e) Effective Date.** These rules shall take effect as provided in a promulgation order by the Supreme Court of the Virgin Islands.

**(f) Application to Pending Proceedings.** These rules, and subsequent amendments, govern:

- (1) proceedings in any action commenced after their effective date; and
- (2) proceedings in any action pending on the effective date of the rules or amendments, unless

(A) the Supreme Court of the Virgin Islands specifies otherwise by order;

or

(B) the Superior Court makes an express finding that applying them in a

particular previously-pending action would be infeasible or would be unjust.

**(e) Definitions.**

**(1)** In these Rules:

**“Child”** shall mean an individual under the age of 18 years, and – where the context refers to actions by or on behalf of a child – shall also refer to parents, guardians, custodians, or counsel acting on behalf of the child.

**“Department of Human Services”** shall refer to the Virgin Islands Department of Human Services, Child Care and Regulatory Services.

**“Department of Justice”** shall refer to the Virgin Islands Department of Justice.

**“Family Division”** refers to the Family Division of the Superior Court of the Virgin Islands.

**“Parties”** shall include the child, parents, custodians, the Attorney General, the Department of Human Services, and any other person or entity with a recognized legal interest in the proceedings, including grandparents as provided in 16 V.I.C. § 602.

**“Reasonable efforts”** means the exercise of due diligence and care by the Department of Human Services to utilize all available services related to meeting the needs of the child and the family and to assist the parents in remedying the circumstances and conditions that led to the placement of the child and in reinforcing the family structure, including, consultation and cooperation with the parent in developing a plan for appropriate services; providing services to the family which have been agreed upon, in order to further the goal of family reunification; informing the parent at appropriate intervals of the child's progress, development and health; and facilitating appropriate visitation.

**“Relative”** means a parent, step parent, grandparent, great-grandparent, sibling, first cousin, aunt, uncle, great-aunt, great-uncle, niece, nephew, whether related by the whole or half blood, by affinity, or by adoption.

(2) The definitions set forth in 5 V.I.C. § 2502 shall also apply in Family Division proceedings:

**Abandoned child** means a child whose parents, guardian, or custodian desert him/her for a length of time and under such circumstances as to show an intent to evade the duty of rearing the child or a reckless disregard for the child’s needs. It shall be a rebuttable presumption that the parent intends to abandon the child who has been left by his parent without any provision for his support, or without communication from such parent for a period of six months. If, in the opinion of the court, the evidence indicates that such parent has made only minimal efforts to support or communicate with the child, the court may declare the child to be abandoned. Abandonment is a form of neglect.

**Abuse** means any physical or mental or emotional injury inflicted on a child, other than by accidental means, by those responsible for the care and maintenance of the child, which injury causes or creates a substantial risk of death, serious or protracted disfigurement, protracted impairment of physical or emotional health or loss or protracted impairment of the function of any bodily organ. Abuse includes the sexual abuse of a child, as defined by law, or the sexual exploitation, including the prostituting of a child and the photographing or other depiction of a child for pornographic purposes, or a persistent course of sexual conduct that causes a child's health or welfare to be harmed or threatened.

**Adjudicatory hearing** means a hearing conducted in accordance with § 2517 and § 2548 of Title 5, pursuant to which the court makes findings of fact and enters an appropriate order dismissing the case, withholding adjudication, or adjudicating the child to be a delinquent child, person in need of supervision, an abused or neglected child.

**Adult** means an individual 18 years of age or older.

**Attorney General** means the Attorney General of the Virgin Islands, or the designee of that official.

**Case involving abuse** means any proceeding under these Rules in which there are allegations that one or more of the children of, or the legal responsibility of, the respondent are abused children.

**Child** means an individual under the age of 18 years. The terms *child*, *juvenile* and *minor* are used interchangeably throughout these Rules and carry the same definition as child, indicated above.

**Commit** means to transfer legal and physical custody.

**Consent decree** means a decree, entered after the filing of a petition and before the entry of an adjudication order, suspending the proceedings and continuing the care of the child under supervision, under specific terms and conditions.

**Custodian** means a person or agency other than a parent, or guardian to whom legal custody has been given by the court order or who is acting in loco parentis.

**Delinquent act** means an act which, if committed by an adult, would constitute a crime under the laws of the Virgin Islands.

**Delinquent child** means a child who has been adjudicated to have committed a delinquent act.

**Detention care** means the temporary care of a child alleged to be delinquent and held in custody pending disposition.

**Detention hearing** means a hearing at which the court determines whether it is necessary that the child be held in detention care, shelter care, some other placement outside his home, or in his own home under court imposed restrictions, pending a hearing to adjudicate delinquency, abuse or neglect or determine whether the child is a person in need of supervision.

**Detention home** means a facility to be used for the care of a child alleged to be or adjudicated delinquent, abused, neglected, or in need of supervision. A detention home may provide secure or nonsecure custody.

**Father means**, for purpose of these Abuse and Neglect Rules only, a male parent of a child whose parental rights have not been terminated in an order by a court of competent jurisdiction, and who (i) has been determined to be the father by a court of competent jurisdiction; or (ii) received an order of adoption of the child by a court of competent jurisdiction; or (iii) has had paternity of the child legally established pursuant to Title 16, chapter 11 of the Code; or (iv) has made a formal or unequivocal acknowledgment of being a parent of the child; or (v) was married to the mother of a child when the child was conceived or when the child was born, unless a court of competent jurisdiction has by court order ruled to the contrary.

**Imminent danger to a child's life or health** means danger of: (i) substantial impairment of physical well-being as evidenced by lack of adequate nutrition and medical care; or (ii) actual or attempted sexual abuse; or (iii) substantial physical pain; serious bodily injury resulting in physical disfigurement; or (iv) substantial impairment of the function of a bodily member or organ; or (v) injury which may result in death; or (vi) substantial impairment of the intellectual, psychological or emotional capacity of a child caused by inhumane acts or conduct.

**Intake** means the acceptance of complaints and the screening of them by the Department of Human Services to eliminate those which do not require action by the court, the disposition of the complaint without court action when appropriate, the referral of the child to another public or private agency when appropriate, and the instigation of court action when necessary.

**Legal custody** means a legal status created by court order which vests in a custodian the right to have physical custody of a child and to determine where and with whom the child shall live within the territory, and the right and duty to protect, train and discipline the child and to provide the child with food, shelter, education and ordinary medical care, all subject to the powers, rights, duties and responsibilities given to a guardian by the court and subject to any residual parental rights and responsibilities. An individual granted legal custody shall exercise the rights and responsibilities personally unless otherwise authorized by the court.

**Neglect** means the failure by those responsible for the care and maintenance of a child to provide the necessary support, maintenance, education as required by law; and medical or mental health care, to the extent that the child's health or welfare is harmed or threatened thereby. It shall also mean an abandoned child as defined in this chapter.

**Parent** means the father or mother of a child and includes any adoptive parent. It does not include a person whose parental rights in respect to the child have been terminated in

any manner provided by law.

***Person responsible for a child's care*** includes the child's parent, guardian, custodian or other person or agency responsible for the child's welfare or care, whether the child is in his own home, shelter care, detention home, a relative's home, a foster home or a residential institution.

***Person in need of supervision*** means a child who: (i) being subject to compulsory school attendance is habitually truant from school; or (ii) habitually disobeys the reasonable demands of the person(s) responsible for the child's care and is beyond their control; or (iii) has run away from the person(s) responsible for the child's care; or (iv) habitually or unlawfully uses or consumes alcoholic beverages or controlled substances or habitually misuses other substances.

***Probation*** means the legal status created by court order following an adjudication of delinquency, or a person in need of supervision, whereby a minor is permitted to remain in a community environment, subject to supervision and to being returned to the court for violation of probation at any time during the period of probation.

***Protective supervision*** means a legal status created by court order in neglect or abuse cases whereby the child is permitted to remain in his home.

***Residential institution*** means a secure facility administered by The Department of Human Services or other authorized agency for the care of children adjudicated delinquent.

***Residual parental rights and responsibilities*** means the rights and responsibilities remaining with the parent after transfer of legal custody or appointment of a guardian, including, but not necessarily limited to, the right of visitation, consent to adoption, the right to determine religious affiliation, and the responsibility for support.

***Respondent*** means a party to an action, and is any parent, guardian or other person alleged to have abused or neglected a child in their care.

***Shelter care*** means the temporary care of a child in physically unrestricting facilities, including group homes.

**(f) Singular or Plural Usage; Gender.** Where appropriate, use of singular nouns and pronouns shall be construed to include plural nouns and pronouns. References in the singular include the plural. While these Rules attempt to minimize gender-specific references, uses of the masculine form are intended to include the feminine form, and vice versa.

**(g) Absence of Rules.**

**(1) Generally.** Where no Rule is included addressing a procedure, provisions of the Virgin Islands Rules of Civil Procedure and/or the Virgin Islands Rules of Criminal Procedure may be used, adapted as necessary, and the court may specify a procedure. When procedure is not prescribed by Virgin Islands rules of court, precedent from the Supreme Court of the Virgin Islands, or the Virgin Islands Code, a judge may regulate practice in any manner consistent with law of the Virgin Islands.

**(b) Violation of Requirements Not Specified in these Rules or Applicable Law.** No sanction, penalty or other disadvantage may be imposed for noncompliance with any requirement that is not specified in rules of procedure promulgated by the Supreme Court, the Virgin Islands Code, or in the law of the Virgin Islands, unless the court in a particular action has issued an order providing the parties in the action with actual notice of the requirement, and the possible penalties for failure to obey.

**(h) Magistrate Judge Authority.** When the words “judge” or “court” are used in these Family Rules and Procedures, the authority and functions specified may be exercised by an authorized magistrate judge to the extent not otherwise inconsistent with these rules, case law precedent, or any applicable statute or order of the Superior Court.

## **Rule 2. Form, Content and Signing of Pleadings: Sanctions.**

**(a) Form and Content of Pleadings.** The general provisions of Virgin Islands Rules of Civil Procedure 8 and 10 as to the requirements for pleading form and content shall apply in all proceedings in the Family Division, unless otherwise ordered in a particular case by the court.

**(b) Signing and Sanctions.** The requirements for signing pleadings and other papers – and the standards for imposition of sanctions for failure to comply with applicable obligations for factual and legal support, and barring submission of papers for an improper purpose – as set forth in Rule 11 of the Virgin Islands Rules of Civil Procedure shall be applicable in all proceedings in the Family Division.

## **Rule 3. Hearings; General Provisions.**

Unless otherwise more specifically provided in these Rules or by statute, the following provisions apply to all hearings:

**(a) Hearings by Court; Recording.** All proceedings shall be heard without a jury, and recorded as provided in subpart (g) of this Rule.

**(b) Presence of the Child.** The child shall be present unless the court finds that the child’s mental or physical condition is such that a court appearance is not in the child’s best interests.

**(c) Use of Restraints on the Child.** Instruments of restraint, such as handcuffs, chains, irons, or straitjackets, may not be used on a child during a court proceeding and must be removed prior to the child’s appearance before the court unless the court finds both that:

(1) The use of restraints is necessary due to one of the following factors:

(A) Instruments of restraint are necessary to prevent physical harm to the child or another person;

(B) The child has a history of disruptive courtroom behavior that has placed others in potentially harmful situations or presents a substantial risk of inflicting physical harm or himself or herself or others as evidenced by recent behavior; or

(C) There is a founded belief that the child presents a substantial risk of flight from the courtroom; and

(2) There are no less restrictive alternatives to restraints that will prevent flight or physical harm to the child or another person, including, but not limited to, the presence of court personnel, law enforcement officers, or bailiffs,

**(d) Absence of the Child.** If the child is present at the beginning of a hearing and during the progress of the hearing voluntarily absents himself or herself from the presence of the court without leave of the court, or is removed from the presence of the court because of disruptive conduct during the hearing, the hearing shall not be postponed or delayed, but shall proceed in all respects as if the child were present in court at all times.

**(e) Invoking the Rule on Witnesses Excused from Courtroom.** Prior to the examination of any witness the court may, and on the request of any party in an adjudicatory hearing shall,

exclude all other witnesses except expert witnesses. The court may cause witnesses to be kept separate and to be prevented from communicating with each other until all are examined.

**(f) Continuances.** The court may grant a continuance before or during a hearing for good cause shown by any party.

**(g) Record of Testimony.** A record of the testimony in all hearings shall be made by an official court reporter, a court approved stenographer, or a recording device. The records shall be preserved for five years from the date of the hearing. Official records of testimony shall be provided only on request of a party or a party's attorney or on a court order.

**(h) Notice.** When these rules do not require a specific notice, all parties will be given reasonable notice of any hearing.

#### **Rule 4. Temporary Standing Orders; Pendente Lite Orders.**

**(a) Standing Orders.** After defendant has been served with process in an action for dissolution of marriage or legal separation, the court shall promptly enter a temporary standing order to maintain the status quo unless it finds good cause not to do so. The temporary standing order may address issues such as, but not limited to, custodial arrangements, the children's support and welfare, conduct of the parties toward the children, finances, records and evidence, insurance and such other issues as the court may deem appropriate.

**(b) Modification of Standing Order.** Before or after the entry of a temporary standing order as provided in subpart (a) of this Rule, either party to an action for dissolution of marriage or a legal separation may file a motion for specific temporary spousal support, temporary child support, temporary child custody, visitation, payment of debts, payment of interim attorney's fees and costs, and possession of property. Such motions shall be supported by affidavits setting forth the pertinent facts and accurate financial information, along with any supporting exhibits, and shall set forth the specific temporary relief requested, including specific amounts, and the factual basis for the amounts requested.

**(c) Proof of Service.** Unless otherwise ordered by the court in a particular case, service of motions for relief pendente lite shall be made in accordance with V.I Rule of Civil Procedure 5.

**(d) Opposition Papers.** After service of a motion for relief pendente lite, a statement of opposing points and authorities, with supporting affidavits and exhibits, shall be filed and served as provided in V.I. Rule of Civil Procedure 5 within 14 days, or such longer or shorter period as the court may direct. If a statement of opposing points and authorities is not filed within the prescribed time the court may treat the motion for relief pendente lite as conceded. If a statement of opposing points and authorities is filed, the motion shall be treated as submitted unless an oral hearing is expressly requested and granted by the court, or the court sets the hearing of its own accord.

#### **(e) Hearing on Motions for Relief Pendente Lite.**

(1) *Where child custody is at issue.* A pendente lite hearing on temporary child custody may be requested by a party, to be held within 30 days of the request by that party for a pendente lite hearing. The court, in its discretion, may determine a temporary motion relating to child support or custody upon the record or may permit the introduction of evidence by oral testimony.

(2) *Where child custody is not at issue.* The court shall determine the matter expeditiously, and may, at its discretion, require a hearing on the issues, or may determine

requests for temporary relief pendente lite without testimony, based upon affidavits and other supporting information filed by the parties.

**(f) Award of interim attorney's fees and costs.**

(1) "*Interim attorney's fees and costs*" means attorney's fees and costs assessed from time to time while a case is pending, in favor of the moving party, for reasonable fees and costs either already incurred or to be incurred; and "*interim award*" means an award of interim attorney's fees and costs.

(2) Interim awards shall be governed by the following:

(A) Except as otherwise ordered by the court for good cause shown, a proceeding for (or relating to) interim attorney's fees and costs in a pre-judgment dissolution proceeding shall be nonevidentiary and summary in nature.

(B) All hearings for or relating to interim attorney's fees and costs under this subsection shall be scheduled expeditiously by the court.

(C) When a party files a petition for interim attorney's fees and costs supported by one or more affidavits addressing the relevant factors, the court shall assess an interim award after affording the opposing party a reasonable opportunity to file a response within 14 days.

(D) Any response shall set out the amount of each retainer or other payment or payments, or both, previously paid to the responding party's counsel by or on behalf of the responding party. A response shall include costs incurred, and shall indicate whether the costs are paid or unpaid. In assessing an interim award, the court shall consider all relevant factors, as presented, that appear reasonable and necessary.

**(g) Termination of Temporary Order.** A provisional order terminates when:

- (1) the final decree is entered subject to right of appeal; or
- (2) the petition for dissolution or legal separation is dismissed; or
- (3) the court amends or vacates the order.

**Rule 5. Closure of Proceedings Involving Children.**

In accord with 5 V.I.C. § 2517, and other provisions of Virgin Islands law, except in hearings to declare a person in contempt of court, the general public shall be excluded from all hearings involving a child and only the parties, their counsel, witnesses, and other persons requested by a party shall be admitted. Such other persons as the court finds to have a proper interest in the case or in the work of the court may be admitted by the court, on the condition that such persons refrain from divulging any information which would identify the child or family involved, or the substance of the hearing.

**Rule 6. Consolidation of Family Division Proceedings; Effect of Delinquency Proceedings.**

**(a) Consolidation of related family matters.** The court may, upon the motion of any party or upon its own motion, consolidate an abuse and neglect action with other cases before the Family Division relating to the child or members of the same family or household, including juvenile, abuse, neglect, domestic violence, domestic relations, custody, visitation, support, adoption, termination of parental rights, paternity, mental health and involuntary commitment cases. Upon consolidation, copies of the order of consolidation shall be filed in each case so

consolidated; however, all other papers filed in an adoption case shall be maintained only in the adoption case file.

**(b) Notice.** For joint or coordinated hearings, notice to all parties and to all attorneys of record in each related case shall be provided by the court, the moving party, or other party as ordered by the court, regardless of whether or not the party providing notice is a party in every case number that will be called for a hearing.

**(c) Effect of juvenile proceedings in an abuse or neglect case.** The existence of a juvenile proceeding against a child who is the subject of an abuse or neglect proceeding need not affect the status of the child in the neglect or abuse case, nor shall it be the sole basis for the termination of the neglect or abuse proceeding.

#### **Rule 7. Summonses and Service of Process.**

Unless otherwise ordered by the court or these Rules, the form, issuance requirements and service procedures for a summons in any proceeding in the Family Division – and for service of initial process – shall be governed by Virgin Islands Rules of Civil Procedure 4 and 4.1 as applicable, and Rule 28 of these Family Rules and Procedures.

#### **Rule 8. Filing and Service of Papers After Process is Served; Computing Dates.**

Except as may be otherwise directed by the court in a particular case, the service and filing of pleadings and other papers – after initial service of process has been completed – shall be governed by Virgin Islands Rule of Civil Procedure 5, and the computation of dates for responses or filings shall be governed by Rule of Civil Procedure 6.

#### **Rule 9. Providing Appointed Counsel to parties.**

At each stage of a proceeding in the Family Division the court shall advise all parties of their right to have counsel present. The court shall appoint an attorney for the child or parent, guardian of the child when needed as permitted by law.

#### **Rule 10. Guardians Ad Litem.**

**(a) Appointment.** At any stage of the proceedings any party may request, or the court may appoint, a guardian ad litem to represent any child.

**(b) Responsibilities.** The guardian ad litem shall have the following responsibilities:

(1) To investigate the allegations and any subsequent matters arising in the case and, unless excused by the court, to file a written report. This report shall include a statement of the wishes of the child and the recommendations of the guardian ad litem and shall be provided to all parties and the court at least 48 hours before the disposition and review hearings. (2) To be present at all court hearings unless excused by the court.

(3) To represent the interest of the child until the jurisdiction of the court over the child terminates or until excused by the court.

(4) To perform such other duties and undertake such other responsibilities as the court may direct.

**(c) Receiving Service of Papers.** A guardian ad litem shall be entitled to receive service of pleadings and other papers filed in the proceeding after the date of appointment.

**Rule 11. Motion Practice.**

Unless the court orders the use of other procedures, prehearing motions shall be governed by the provisions of Virgin Islands Rules of Civil Procedure 6-1, 6-2, 6-3, 6-4, 6-5 and, in delinquency, abuse and neglect proceedings, by the provisions of Virgin Islands Rule of Criminal Procedure 12, adapted as necessary.

**Rule 12. Subpoenas.**

Unless otherwise ordered by the court, subpoenas for any proceeding in the Family Division shall be issued, served and enforced in accord with the provisions of V.I. Rule of Civil Procedure 45 and, in delinquency or abuse and neglect proceedings, in accord with the provisions of V.I. Rule of Criminal Procedure 17.

**Rule 13. Physical or Mental Examinations.**

**(a) Order.** As provided in 5 V.I.C. § 2506, at any time following the filing of a complaint, on motion of any party, or on its own motion, the court may order a child to be examined to aid in determining his physical or mental condition, including the emotional stability of the child.

**(b) Conduct of Examination.**

(1) Whenever possible, examinations shall be conducted on an outpatient basis, or a voluntary inpatient basis. The court may, after a hearing where the child is determined to be delinquent, a person in need of supervision, abused or neglected, commit the child to a suitable facility or institution for the purpose of examination.

(2) The order for examination shall specify the nature and objectives of the proposed examination as well as the place where the examination shall take place.

**(c) Results of Examination.**

**(1) Suspension of Proceedings.** As further provided in 5 V.I.C. § 2506, if as a result of mental examination the court determines that a child alleged to be delinquent or in need of supervision is incompetent to participate in proceedings under the complaint by reason of mental illness or substantial retardation, it shall suspend further proceedings. If proceedings are suspended, the Attorney General may initiate commitment proceedings pursuant to the law.

**(2) Use of Results.** The results of an examination undertaken pursuant to 5 V.I.C. § 2506 are admissible in a transfer hearing pursuant to 5 V.I.C. § 2509, in a dispositional hearing, or in a commitment hearing.

**Rule 14. Reporting Re Uniform Child Custody Jurisdiction & Enforcement Act.**

In any proceeding in the Family Division involving parental responsibility for, custody of, or time-sharing or visitation with, any minor child(ren), every party shall promptly provide an affidavit, to the extent of the affiant's personal knowledge, under the Uniform Child Custody Jurisdiction and Enforcement Act, specifying (i) the names, date of birth and addresses of all children involved; (ii) the residence location of each child during the preceding five years; (iii)

whether the affiant has participated as a party, witness, or in any capacity in any other litigation or custody proceeding in this or any other jurisdiction concerning parental responsibility for, custody of, or time-sharing or visitation with a child subject to this proceeding; (iv) whether the affiant knows of any other person in this or any other jurisdiction who is not a party to this proceeding and who has physical custody or claims to have parental responsibility for, custody of, or time-sharing or visitation with respect to any child subject to this proceeding, (v) acknowledging that the affiant has a continuing duty to advise the court of any parental responsibility, custody, time-sharing or visitation, child support, or guardianship proceeding (including dissolution of marriage, separate maintenance, child neglect, or dependency) concerning the child(ren) in this Territory or any other state or territory about which information is obtained during this proceeding. This affidavit is required even if the parental responsibility for, custody of, or time-sharing or visitation with, the minor child(ren) is not in dispute.

**Rule 15. Privacy Protection For Filings Made with the Court.**

Unless the court orders otherwise in a particular Family Division case, the provisions of Virgin Islands Rule of Civil Procedure 5.2 shall govern electronic or paper filings with the court that contain an individual's social security number, taxpayer identification number, or birth date, the name of an individual known to be a minor, or a financial account number.

**Rule 16. Testimony by Closed-Circuit Television; Telephone.**

Applications for the taking of testimony by remote audiovisual means may be made in accord with 5 V.I.C. § 3510 or other statutory authority.

**Rule 17. Transfer of Cases Between Courts.**

**(a) *Transfer Out of the Family Division.*** Transfer of cases from the Family Division to another court of competent jurisdiction, including the procedures, standards, and timing thereof, is governed by 5 V.I.C. § 2508 and § 2509, and other provisions of Virgin Islands law.

**(b) *Transfer Into the Family Division from Other Courts.*** Cases may be transferred into the Family Division of the Superior Court as provided in 5 V.I.C. § 2507, and other provisions of Virgin Islands law.

Rules 18 – 20. Reserved.

## Part B – Juvenile Delinquency Proceedings

### **Rule 21. Right to Counsel.**

A child alleged to be delinquent or a person in need of supervision where involuntary detention may result is entitled to be represented by counsel. In accord with 5 V.I.C. § 2505(a), if the child and parent(s), or other person(s) responsible for the child's care are financially unable to obtain adequate representation, the child shall be entitled to have counsel appointed in accordance with the rules established by the court. In its discretion, the court may appoint counsel for the child over the objection of the child, the parent(s), or other person(s) responsible for the child's care.

### **Rule 22. Child Taken Into Custody Without Prior Court order or Warrant.**

If a child is taken into custody by a law enforcement officer or personnel from any authorized office or agency, without a prior court order or warrant:

(a) parents, guardians or other persons responsible for the care of the child shall be notified as provided Rule 55 of these Family Rules and Procedures.

(b) the child shall be afforded a probable cause and detention hearing as provided in Rule 25.

### **Rule 23. Taking a Child Into Custody on Order Without Complaint.**

In the event that any person has reason to believe that a child is within the jurisdiction of the Family Division, but is uncertain whether or not a complaint should be filed, an affidavit or sworn testimony containing a statement of the circumstances or misconduct in which the child is believed to be involved shall be filed with the court in lieu of a complaint. The court may issue an order to a person, authorized to do so, directing that the child be taken into custody pursuant to 5 V.I.C. §2511. The order shall:

(a) be in writing;

(b) specify the name and address of the child or, if unknown, designate the child by any name or description by which the child can be identified with reasonable certainty;

(c) specify the age and gender of the child or, if the child's age is unknown, that the child is believed to be of an age subject to the jurisdiction of the Family Division of the court as juvenile case;

(d) state the reasons why the child is being taken into custody; and

(e) order that the child be brought immediately before the court or be taken to a place of detention designated by the court pending a detention hearing pursuant to 5 V.I.C. §2514.

(f) a copy of the order shall be served without unnecessary delay upon the parents or other person(s) responsible for the care of the child, and upon the office of the Attorney General.

#### **Rule 24. Notification of Parent(s) or Guardian(s); Release or Delivery to Court; Warrant**

**(a) Notification.** A law enforcement officer taking a child into custody shall give written notice of that action – together with a statement of the reason for taking the child into custody – as soon as possible to a parent, or other person responsible for the child's care and to the Attorney General's office.

**(b) Delivery of the Child.** The officer taking custody of a child shall do one of the following:

(1) release the child to parents, guardians, custodians or other persons responsible for the child's care and issue verbal counsel or warning as may be appropriate;

(2) release the child to parents, guardians, custodians or other persons responsible for his care upon their promise to bring the child before the court when requested by the court;

(3) bring the child to the intake officer at The Department of Human Services;

(4) deliver the child to a place of detention or shelter care; or

(5) deliver the child to a medical facility, if the child is believed to be suffering from a serious physical or mental condition or illness which requires either prompt treatment or prompt diagnosis for evidentiary purposes.

**(c) Attorney General Review.** When a child is delivered to a place of detention or shelter care, the Attorney General shall review the need for detention or shelter care and shall release the child unless detention or shelter care is required under 5 V.I.C. § 2514 or has been ordered by the court.

**(d) Failure to Bring Child Before the Court.** If a parent, guardian, custodian or other person responsible for a child's care fails, when requested, to bring the child before the court, the court may issue a warrant directing that the child be taken into custody and brought before the court.

#### **Rule 25. Hearing on Probable Cause on Delinquency; Detention**

**(a) When Required.** A child who is detained shall be given a hearing before the court as soon as practicable after the child is taken into custody, and no later than 48 hours, excluding Sundays, after the child is placed in detention.

**(b) Place.** The detention hearing may be held in the district where the incident occurred, where the child is taken into custody, or where the child is detained.

**(c) Notice.** The Department of Justice shall give prompt notice to the parent(s), guardian(s) or custodian(s) of the child of the time and place of the hearing and – if a complaint has been prepared – shall provide a copy of the complaint. The notice shall be by the most expeditious method available.

**(d) Appointment of Counsel.** At the detention hearing, the child shall be advised of the right to be represented by counsel. Counsel shall be appointed as provided by law.

**(e) Description of Complaint or Act Charged.** After the appointment of counsel for the child, the court shall inform the child of the contents of the complaint, or – in the absence of a complaint – the alleged delinquent act, and shall afford the child an opportunity to admit or deny the allegations the complaint.

**(f) Right to be Heard on Behalf of the Child.** The child and the child's parents, and other persons responsible for the child's care, shall have a right to be heard on the child's behalf.

**(g) Issues.** At this hearing the court shall determine the following:

(1) ***The existence of probable cause to believe the child has committed a delinquent act.*** This issue shall be determined in a non-adversary proceeding. The court shall apply the standard of proof necessary for an arrest warrant and its finding may be based upon a sworn complaint, affidavit, deposition under oath or, if necessary, upon testimony under oath properly recorded.

(2) ***The need for detention according to the criteria provided by 5 V.I.C. §2514.*** In making this determination, in addition to the sworn testimony of available witnesses all relevant and material evidence helpful in determining the specific issue, including oral and written reports, may be relied on to the extent of their probative value, even though such material might not be admissible at an adjudicatory hearing. No detention order shall be entered without a hearing at which all parties (including the child, parents or custodians or guardians, the Attorney General's office, and the Public Defender's office) shall have an opportunity to be heard on the necessity for the child's being held in detention, unless the court finds that the parent or custodian cannot be located or that the child's mental or physical condition is such that a court appearance is not in the child's best interest.

(3) ***The need to release the child from detention and return the child to the child's parents, guardian, or custodians.***

**(h) Results of Probable Cause Determination.** If the court finds that probable cause exists that the delinquent act was committed, and that statutory grounds for detention exist, it shall retain the child in detention. If the court finds that probable cause does not exist, it shall forthwith release the child from detention. Release of the child based on a finding that no probable cause exists shall not prohibit the filing of a complaint and further proceedings thereunder, but shall prohibit holding the child in detention prior to an adjudicatory hearing.

**(i) Conditions of Release.** If a child is ordered released, the court may:

(1) place the child in custody of a parent, guardian, custodian or other responsible adult under their supervision, or under the supervision of an agency agreeing to supervise him;

(2) place restrictions on the child's travel, association, or place of abode during the period of his release; or

(3) impose any other conditions reasonably necessary to assure the appearance of the child at the next court hearing or his protection from harm, including a requirement that the child return to the physical custody of the parent, guardian, custodian or other responsible adult under paragraph (1) of this subsection after specified hours.

**(j) Amendment of Orders.** An order releasing the child under this Rule may be amended at any time – after a judicial hearing – to impose additional or different conditions of release or to return the child to custody for failure to conform to conditions imposed.

**(k) Rehearing.** If the child is not released and the parent or other person responsible for the child's care has not been notified and did not appear or waive appearance at the hearing, upon the filing of a statement from such parent or other person responsible for the child's care, stating these facts the court upon finding good cause shall rehear the matter without unnecessary delay.

## **Rule 26. Delinquency Proceedings Commenced by Complaint**

**(a) Initiation of Proceedings.** A delinquency proceeding shall be initiated by the filing of a written complaint by a person authorized by law to do so. The complaint shall be upon oath and must be signed by the Attorney General or an authorized designee of that office. The complaint shall be entitled “**People of the Virgin Islands in Interest of \_\_\_\_\_**”

### **(b) Contents of Complaint.**

(1) Each complaint shall be addressed to the Family Division and shall allege facts showing the child to have committed a delinquent act.

(2) The complaint must be a plain, concise, and definite written statement of the essential facts constituting the offense charged.

(3) The complaint shall contain allegations as to the child’s date and place of birth.

(4) The complaint shall contain allegations as to the identity and residence of the parents or custodians, if known.

(5) Two or more allegations of the commission of delinquent acts may appear in the same complaint, in separate counts.

(6) Each count shall recite the official or customary citations of the statute, ordinance, rule, regulation, or other provision of the law which the child is alleged to have violated, including the degree of each offense.

(7) Two or more children may be the subject of the same complaint if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. The children may be named in one or more counts together or separately and all of them need not be named in each count.

(8) Allegations made in one count shall not be incorporated by reference in another count.

**(b) Verification.** The complaint shall be signed by the Attorney General stating under oath the complainant’s good faith in filing the complaint. No objection to a complaint on the grounds that it was not signed or verified, as herein provided, shall be entertained after a plea to the merits.

**(c) Child’s Right to Copy of Complaint.** Upon application to the clerk, a child or the child’s parents, custodians or guardians, must be furnished a copy of the complaint and the endorsements on it at least 24 hours before being required to plead to the complaint.

**(d) Amendments.** At any time prior to the adjudicatory hearing an Amended complaint may be filed or the complaint may be amended on motion. Amendments shall be freely permitted in the interest of justice and the welfare of the child. A continuance may be granted upon motion and a showing that the amendment prejudices or materially affects any party.

**(e) Statement of Particulars.** The court, on motion, shall order the prosecuting attorney to furnish a statement of particulars when the complaint on which the child is to be tried fails to inform the child of the particulars of the offense sufficiently to enable the child to prepare a defense. A statement of particulars must specify as definitely as possible the place, date, and all other material facts of the offenses or acts charge to the extent such information is available to the prosecuting attorney. Reasonable doubts concerning the construction of this rule shall be resolved in favor of the child.

**(f) Defects in Form; Misjoinder of Offenses.** No complaint or any count thereof shall be dismissed, or any judgment vacated, on account of any defect in the form of the complaint or of misjoinder of offenses.

**Rule 27. Advice of Rights Hearing in Delinquency Cases; Arraignment**

**(a) When Required:** Promptly after a complaint is filed and the child is being detained, whether in secure, non-secure, or home detention, the child shall be given a copy of the complaint and shall be brought before the court for advice of rights, and if needed appointment of counsel, and arraignment shall be held within 48 hours of the filing of the complaint, excluding Saturdays, Sundays, or legal holidays, or within two weeks after any probable cause hearing under Rule 25, whichever date is earlier.

**(b) Notice.**

(1) Personal appearance of any person in a hearing before the court shall obviate the necessity of serving process on that person.

(2) The clerk of the court shall give notice of the time and place of the arraignment to the parent or guardian of the child, The Department of Human Services, and the representative of the detention facility by:

- (A) summons;
- (B) written notice; or
- (C) telephone notice.

(3) Department of Justice shall verify that a diligent effort has been made to notify the parent(s), custodian(s), and guardian(s) of the child of the time and place of the arraignment.

**(c) Advice of Rights.** The court shall inform the child of the charges and advise the child of all applicable constitutional and procedural rights, including the right to remain silent, and the right to counsel.

**(d) Arraignment.** An arraignment must be conducted in open court unless closed as authorized or required by law, and must consist of:

- (1) entry of any appearance by counsel, or appointment of counsel for the child;
- (2) ensuring that the child has a copy of a statement of the charges;
- (3) reading the complaint or a statement of the substance of the charges, unless the defendant waives formal reading or statement of the charges; and then
- (4) asking the child to plead.

**(e) Acceptance of Plea.**

**(1) Plea of Not Delinquent.** A plea of not delinquent shall be entered if made by the child. If a child stands mute or pleads evasively, a plea of not delinquent shall be entered on behalf of the child by the court.

**(2) Plea of Delinquent.** A plea of delinquent may be entered and accepted in accord with the provisions of Rule 32.

## **Rule 28. Summonses, Warrants, and Subpoenas in Delinquency Proceedings**

### **(a) Summons.**

(1) *Issuance When Child is Not Detained.* Upon the filing of a complaint upon a child who is not detained by the order of the court, the clerk shall issue a summons to the child and the parents or guardians or persons standing in loco parentis. The summons shall require the person on whom it is served to appear for a hearing at a time and place specified. The summons shall require the custodian to produce the child at the said time and place. A copy of the delinquency complaint shall be attached to the summons.

(2) *Form.* The summons shall set forth the name of the child and the name of the parents, guardian or custodian of the child and shall contain a brief statement of the facts which are alleged in the complaint to bring the child within the jurisdiction of the court. It shall command the child and his or her parents, guardian, or custodian to appear before the court at a stated time and place, or to deliver the child to the place of detention designated therein. It shall be signed by the judge, or, if authorized by the court, by the clerk of the court.

(3) *If Child is Being Detained.* If the child is being detained by order of the court, notice must be given as required under Rule 27 governing advice of rights and arraignment proceedings. A summons shall not be required in such cases unless the court in its discretion determines that a summons is necessary to assure the presence of a parent, guardian or other custodian of the child for court proceedings.

### **(4) Service and Return.**

(A) *By Whom.* The summons shall be executed by any peace officer or other person, or in any other manner authorized by law.

(B) *Territorial Limits.* The summons may be served at any place within the territory.

(C) *Service.* The summons shall be served by delivering a copy to the parents or either of them, guardian or custodian(s) of the child, or by leaving it at their place of abode with a member of that person's family over the age of 16 years, residing therein, or by mailing it to the last known address by certified mail.

(D) *Waiver of Service or Notice Requirements.* Requirements for service of process or other notice of proceedings may be waived by any person by voluntary appearance.

(E) *Persons Outside the Territory.* If the parents or custodian are out of the territory and their address is known the clerk shall give them notice of the proceedings by certified mail. Service of process may be waived by voluntary appearance.

(F) *Return.* On or before the return date, the person to whom a summons was delivered for service shall make return thereof to the court before which the summons is returnable.

### **(b) Issuance of Warrants.**

(1) *Failure To Appear Pursuant to Summons.* In the event that any person or persons fail to appear in court as required by summons, the judge may issue a warrant.

(2) *Immediate Custody in the Public Interest.* In lieu of summons in the event that misconduct alleged in the complaint indicates that immediate custody of the child is in the public interest, the judge may issue a warrant.

(3) **Form of Warrant.** The warrant shall be in the same form as the summons except that it shall command that the person or persons named therein be taken into custody and placed in detention, or brought before the court.

(c) **Subpoenas.** As provided in Rule 12 of these Family Rules and Procedures, the issuance, service and enforcement of subpoenas shall be governed by the provisions of V.I. Rule of Criminal Procedure 17.

### **Rule 29. Preliminary Action By Judge in Delinquency Cases**

(a) **Scheduling of Hearing; Dismissal.** Upon receipt of a delinquency complaint, the judge shall forthwith schedule a hearing or – if warranted by law -- may dismiss the complaint.

(b) **Consent Decree.** At any time after the filing of a delinquency complaint or person in need of supervision petition and before the entry of an adjudication order, the court may, on motion by the Attorney General or counsel for the child, suspend the proceedings and place the child under supervision in the community, under terms and conditions negotiated with The Department of Human Services or other authorized agency and agreed to by the Attorney General and the child. The court's order continuing the child under supervision shall be known as a consent decree, as provided in Rule 30 of these Family Rules and Procedures.

(c) **Where Consent is Absent.** Where the child objects to a consent decree, the court shall proceed to findings, adjudication and disposition. Where the child does not object, but an objection is made by the Attorney General, the court shall, after considering the objections and reasons therefor, proceed to determine whether it is appropriate to enter a consent decree.

(d) **Duration of Consent Decree.** A consent decree shall remain in force for six months, unless the child is discharged sooner by The Department of Human Services or other authorized agency. Upon application of The Department of Human Services or other agency supervising the child, made before expiration of the six-month period, a consent decree may be extended by the court for an additional six months.

(e) **New Complaint; Reinstatement of Prior Complaint.** If prior to the child's discharge by The Department of Human Services or other authorized agency, or expiration of the consent decree, a new delinquency or person in need of supervision complaint is filed against the child, or The Department of Human Services determines the child otherwise fails to fulfill express terms and conditions of the decree, the complaint under which the child was continued under supervision may, in the discretion of the Attorney General, be reinstated and the child held accountable just as if the decree had never been entered.

(f) **Discharge.** A child who is discharged by The Department of Human Services, or who completes a period of continuance under supervision without reinstatement of the original delinquency complaint or person in need of supervision complaint, shall not again be proceeded against in any court for the same offense alleged in the complaint.

### **Rule 30. Plan for Treatment, Training or Conduct; Consent Decrees**

(a) **Submission of Plan; Supervision; Allegations of Complaint Not Admitted.** After the filing of a complaint in a delinquency matter and prior to the adjudicatory hearing, a plan of proposed treatment, training, or conduct for the child may be submitted in lieu of a plea, and shall be known as a consent decree. The appropriate divisions of The Department of Human Services or other agency as designated by the court shall be supervise said plan and the terms

and conditions of all such plans shall be formulated in conjunction with the supervising agency involved. The submission of a plan is not an admission of the allegations of the complaint.

**(b) Procedure.** If such a plan is submitted the procedure shall be as follows:

(1) The plan must be in writing, agreed to and signed in all cases by the Attorney General, the child, the child's counsel, and, unless excused by the court, by the parents or custodian.

(2) An authorized agent of the supervising agency involved shall indicate whether the agency recommends acceptance of the plan.

(3) The plan shall contain a stipulation by the child that speedy trial rights are waived and shall include the Attorney General's consent to defer the prosecution of the complaint.

(4) After hearing, which may be waived by stipulation of the parties and the supervising agency, the court may accept the plan and order compliance therewith, or may reject it. If the plan is rejected by the court, the court shall state on the record the reasons for rejection.

(5) Violations of the conditions of the plan shall be presented to the court by motion by the Department of Justice. If the court, after hearing, finds a violation has occurred, it may take such action as is appropriate to enforce the plan, modify the plan by supplemental agreement, or set the case for hearing on the original complaint.

(6) The plan shall be effective for an indeterminate period, for such period as is stated therein, or until the complaint is dismissed.

(7) Unless otherwise dismissed, the complaint may be dismissed on the motion of the person submitting the plan or the supervising agency, after notice of hearing and a finding of substantial compliance with the provisions and intent of the plan.

### **Rule 31. Discovery in Delinquency Proceedings**

**(a) Applicability.** Subpart (b) of this Rule shall govern discovery in juvenile delinquency proceedings unless the court, after affording the parties an opportunity to be heard, rules in its discretion that the discovery provisions of V.I. Rule of Criminal Procedure 16 shall govern the discovery process in any individual case.

**(b) Notice of Discovery**

**(1) Election of Child.** After the filing of the complaint, a child may elect to utilize the discovery process provided by this Rule, including the taking of discovery depositions, by filing with the court and serving upon the complainant a "notice of discovery" which shall bind both the complainant and the child to all discovery procedures contained in these rules. Participation by a child in the discovery process, including the taking of any deposition by a child, shall be an election to participate in discovery. If any child knowingly or purposefully shares in discovery obtained by a codefendant, the child shall be deemed to have elected to participate in discovery.

**(2) Attorney General's Disclosure.** Within five days of service of the child's notice of discovery, the complainant shall serve a written discovery disclosure that provides to the child or the child's counsel – and/or permits the child or the child's counsel to inspect, copy, test, and photograph – the following information and material within the Attorney General's possession or control:

(A) A list of the names and addresses of all persons known to the Attorney General to have information which may be relevant to the allegations, to any defense thereto, or to any similar fact evidence to be presented at trial under Virgin Islands law. The names and addresses of persons listed shall be clearly designated in the following categories:

(i) *Category A.* These witnesses shall include

(a) eye witnesses;

(b) alibi witnesses and rebuttal to alibi witnesses;

(c) witnesses who were present when a recorded or unrecorded statement was taken from or made by the child or codefendant, which shall be separately identified within this category.

(d) investigating officers;

(e) witnesses known by the complainant to have any material information that tends to negate the guilt of the child as to the complainant's allegations;

(f) child hearsay witnesses; and

(g) expert witnesses who have not provided a written report and a curriculum vitae or who are going to testify.

(ii) *Category B.* All witnesses not listed in either Category A or Category C.

(iii) *Category C.* All witnesses who performed only ministerial functions or whom the Attorney General does not intend to call at the hearing and whose involvement with and knowledge of the case is fully set out in a police report or other statement furnished to the defense.

(B) The statement of any person whose name is furnished in compliance with the preceding paragraph. The term "statement" as used herein means a written statement made by said person and signed or otherwise adopted by him or her and also includes any statement of any kind or manner, including oral statements, made by such person that are written or recorded or summarized in any writing or recording. The term "statement" is specifically intended to include all police and investigative reports of any kind prepared for or in connection with the case, but shall not include the notes from which such reports are compiled.

(C) Any written or recorded statements and the substance of any oral statements made by the child and known to the Attorney General, including a copy of any statements contained in police reports or summaries, together with the name and address of each witness to the statements.

(D) Any written or recorded statements, and the substance of any oral statements, made by a codefendant if the hearing is to be a joint one.

(E) Those portions of recorded grand jury minutes that contain testimony of the child.

(F) Any tangible papers or objects which were obtained from or belonged to the child.

(G) Whether the Attorney General has any material or information which has been provided by a confidential informant.

(H) Whether there has been any electronic surveillance, including wiretapping, of the premises of the child, or of conversations to which the child was a party, and any documents relating thereto.

(I) Whether there has been any search or seizure and any documents relating thereto.

(J) Reports or statements of experts made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons.

(K) Any tangible papers or objects which the Attorney General intends to use in the hearing and which were not obtained from or belonged to the child.

(3) As soon as practicable after the filing of the complaint, any material information within the Attorney General possession or control which tends to negate the delinquency of the child as to the complaint's allegations shall be disclosed.

(4) The Attorney General shall perform the foregoing obligations in any manner mutually agreeable to the Attorney General and the child, or as ordered by the court.

(5) Upon a showing of materiality to the preparation of the defense, the court may require such other discovery to the child as justice may require.

**(b) Required Disclosure by the Child.**

(1) If a child elects to participate in discovery, within five days after receipt by the child of the discovery disclosure furnished by the Attorney General under this rule, the following disclosures shall be made:

(A) The child shall furnish to the Attorney General a written list of all persons whom the child expects to call as witnesses at the hearing. When the Attorney General subpoenas a witness whose name has been furnished by the child, except for hearing subpoenas, reasonable notice shall be given to the child as to the time and location of examination pursuant to the subpoena. At such examination, the child through counsel shall have the right to be present and to examine the witness.

(B) The child shall serve a written discovery disclosure which shall disclose to the Attorney General and permit inspection, copying, testing, and photographing the following information and material which is in the child's possession or control:

(i) The statement of any person whom the child expects to call as a trial witness other than that of the child.

(ii) Reports or statements of experts made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons.

(iii) Any tangible papers or objects which the child intends to use in the hearing.

(2) The child shall perform the foregoing obligations in any manner mutually agreeable to the child and the complainant or as ordered by the court.

(3) The filing of a motion for protective order by the complainant will automatically stay the times provided for in this subdivision. If a protective order is granted, the child may, within two days thereafter, or at any time before the complainant furnishes the information or material which is the subject of the motion for protective order, withdraw the demand and not be required to furnish reciprocal discovery.

**(c) Limitations on Disclosure; Court Orders**

**(1) *Materials not Subject to Disclosure.*** The following matters shall not be subject to disclosure:

(A) Legal research or of records, correspondence, or memoranda, to the extent that they contain the opinion, theories, or conclusions of the prosecuting or defense attorney or members of their legal staff.

(B) Confidential informant identification, unless the confidential informant is to be produced at a hearing or a failure to disclose the informant's identity will infringe upon the constitutional rights of the child.

**(2) *Restrictions by Court Order.*** Upon application, the court may deny or partially restrict disclosure authorized by this Rule if it finds there is a substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment resulting from such disclosure, which outweighs any usefulness of the disclosure to the party requesting it.

**(d) *Depositions.*** The procedures set forth in Rule 15 of the Virgin Islands Rules of Criminal Procedure for the taking of depositions shall govern the taking of depositions in delinquency proceedings. The notice of taking of a deposition may be given orally or in writing, at least 48 hours prior to any deposition.

**Rule 32. Acceptance of a Plea of Delinquent; Withdrawal of Pleas**

**(a) *Voluntariness.*** Before accepting a child's plea of delinquent, the court shall determine that the plea is knowingly and voluntarily entered with a full understanding of the nature of the allegations and the possible consequences of such plea and that there are factual bases for it.

**(b) *Open Court.*** All pleas shall be taken in open court, except the hearing must be closed as provided by law.

**(c) *Determination by Court.*** The court, when making this determination, should place the child under oath and shall address the child personally. The court shall determine that the child understands each of the following matters and the consequences of entering a delinquency plea:

(1) The nature of the charge to which the plea is offered and the possible dispositions available to the court.

(2) The child has the right to be represented by an attorney at every stage of the proceedings and, if necessary, one will be appointed.

(3) That the child has the right to plead not delinquent, or to persist in that plea if it had already been made, and that the child has the right to an adjudicatory hearing and at that hearing has the right to the assistance of counsel, the right to compel the attendance of witnesses on the child's behalf, the right to confront and cross-examine witnesses, and the right not to be compelled to incriminate himself or herself.

(4) That, if the child pleads not delinquent, without express reservation of the right to appeal, the right to appeal all matters relating to the judgment, including the issue of delinquent or not delinquent.

(5) That, if the child pleads delinquent, there will not be a further adjudicatory hearing of any kind, so that entering a plea of delinquent waives the right to an adjudicatory hearing.

(6) That, if the child pleads delinquent, the court may ask the child questions about the offense to which the child has pleaded, and, if those questions are answered under oath, on the record, the answers may later be used against the child in a prosecution for perjury.

(7) The complete terms of any plea agreement including specifically all obligations the child will incur as a result.

(8) That, if the child pleads delinquent, and the child is not a United States citizen, the facts underlying the plea may subject the child to deportation pursuant to the laws and regulations governing United States Citizenship and Immigration Services.

**(d) Withdrawal of Plea Before Disposition.** The court may in its discretion for good cause shown at any time prior to the beginning of a disposition hearing permit a plea of delinquent to be withdrawn, and if a finding that the child committed a delinquent act has been entered thereon, set aside such finding and allow another plea to be substituted for the plea of delinquent. In the subsequent adjudicatory hearing the court shall not consider the plea which was withdrawn as an admission.

**(e) Withdrawal of Plea After Disposition.** A child who pleads delinquent may file a motion to withdraw the plea within 30 days after the date of entry of an adjudication of delinquency. If the motion is made before a disposition is made, the court may permit withdrawal of the admission if the child shows any fair and just reason that reason substantially outweighs any prejudice which could result to the Territory from the withdrawal of the admission. If the motion is made after disposition, the court may set aside the adjudication of delinquency and permit withdrawal of the admission only to correct manifest injustice, or as otherwise provided by law.

### **Rule 33. Predisposition Study and Report in Delinquency Matters**

**(a) Time to Order Study or Report.** After a complaint has been filed, the court may direct The Department of Human Services or the appropriate agency by law to prepare a predisposition study and report to be submitted in writing to the court, in accord with 5 V.I.C. § 2518. The study and report shall not be made prior to a finding with respect to the allegations of the complaint unless a notice of intent to admit the allegations is filed or unless the counsel for the child waives the right.

**(b) Time to Review Study or Report.** The court may not review a pre-dispositional study or report prior to a finding of delinquency.

**(c) Content of study or Report.** The study shall include information concerning the child, the family, his environment, and any other matters relevant to the disposition of the case.

**(d) Availability of Pre-Disposition Study and Report---**The predisposition study and report made by The Department of Human Services and any report of an expert witness shall be made available to the guardian ad litem and attorneys of record seven days prior to the disposition hearing. For good cause shown, the report of an expert witness may be filed and disclosed subsequent to this time period.

### **Rule 34. Procedure to Determine Competency of Child; Insanity Defense**

**(a) In General:** The issue of a child's competence to be subject to delinquency proceedings may be raised by motion of any party, or upon the court's own motion, at any stage of the proceedings.

**(b) Incompetency At Time of Adjudicatory or Probation Revocation Hearings**

**(1) Motion.**

(A) *On Behalf of the Child.* A written motion for examination of the child made by counsel for the child shall contain a certificate of counsel that the motion is made in good faith and on reasonable grounds to believe that the child is incompetent to proceed. To the extent that it does not invade the lawyer-client privilege, the motion shall contain a recital of the specific observations of and conversations with the child that have formed the basis for the motion.

(B) *By the Attorney General* A written motion for examination of the child made by the Attorney General shall contain a certificate of counsel that the motion is made in good faith and on reasonable grounds to believe the child is incompetent to proceed and shall include a recital of the specific facts that have formed the basis for the motion, including a recitation of the observations of and statements of the child that have caused the state to file the motion.

**(2) Mental Examination:** Competence shall be determined through a mental examination conducted by a psychologist or psychiatrist approved by the court. In addition to the factors ordinarily considered in determining competence in criminal proceedings, the examiner shall consider the following as appropriate to the circumstances of the child:

(A) the age and developmental maturity of the child;

(B) whether the child suffers from mental illness or a developmental disorder, including mental retardation;

(C) whether the child has any other disability that affects the child's competence; and

(D) any other factor that affects the child's competence.

The child, or the state, shall have the right to obtain an independent examination by an expert.

**(3) Report.** The report of an examination ordered by the court or obtained by the child or the state is to be sealed and filed in the juvenile court, with copies transmitted to counsel and available to the parties for review.

**(4) Statements Made in the Course of Examination.** No statement made in the course of an examination by the child examined, whether or not the child has consented to, or obtained, the examination, shall be admitted as evidence in the delinquency proceedings for the purpose of proving the delinquency alleged or for the purpose of impeaching the testimony of the child examined.

**(5) Setting Hearing.** The issue of competence shall be determined by the court after a hearing at which all parties are entitled to present evidence. The hearing shall be held as soon as practicable after the reports of the examination or examinations are filed.

**(6) Child Found Competent to Proceed.** If at the hearing provided for in subdivision (a)(5) the child is found to be competent to proceed with an adjudicatory hearing, the court shall enter an order so finding and proceed accordingly.

**(7) Child Found Incompetent to Proceed.** If at the hearing provided for in subdivision (a)(5) the child is found to be incompetent to proceed, the child must be adjudicated incompetent to proceed and may be involuntarily committed as provided by law to the

Department of Human Services for treatment upon a finding of clear and convincing evidence that:

(A) The child is mentally ill or intellectually disabled and because of the mental illness or intellectual disability of the child:

(i) the child is manifestly incapable of surviving with the help of willing and responsible family or friends, including available alternative services, and without treatment the child is likely to either suffer from neglect or refuse to care for himself or herself, and such neglect or refusal poses a real and present threat of substantial harm to the child's well-being; or

(ii) there is a substantial likelihood that in the near future the child will inflict serious bodily harm on himself or herself or others, as evidenced by recent behavior causing, attempting, or threatening such harm; and

(B) All available less restrictive treatment alternatives, including treatment in community residential facilities or community inpatient settings which would offer an opportunity for improvement of the child's condition are inappropriate.

**(8) Further Reports and Hearing on Competency.** Not later than 6 months after the date of commitment, or at the end of any period of extended treatment or training, or at any time the service provider determines the child has attained competency or no longer meets the criteria for commitment, the service provider must file a report with the court and all parties. Upon receipt of this report, the court shall set a hearing to determine the child's competency.

(A) If the court determines that the child continues to remain incompetent, the court shall order appropriate non delinquent treatment in conformity with this rule and the applicable provisions of the Virgin Islands Code.

(B) If the court determines the child to be competent, it shall enter an order so finding and proceed accordingly.

**(9) Commitment.** Each child who has been adjudicated incompetent to proceed and who meets the criteria for commitment in subdivision (a) (4) must be committed to the Department of Human Services.

(A) A child adjudicated incompetent because of intellectual disability may be ordered into a program designated by the Department of Human Services for intellectually disabled children.

(B) A child adjudicated incompetent because of mental illness may be ordered into a program designated by the Department of Human Services for mentally ill children.

**(10) Continuing Jurisdiction and Dismissal of Proceedings.**

(A) If a child is determined to be incompetent to proceed, the court shall retain jurisdiction of the child for up to two years after the date of the order of incompetency, with reviews at least every 6 months to determine competency. If the court determines at any time that the child will never become competent to proceed, the court may dismiss the delinquency complaint or complaint alleging violation of juvenile probation.

(B) If, at the end of the two-year period following the date of the order of incompetency, the child has not attained competency and there is no evidence that the child will attain competency within a year, the court must dismiss the delinquency complaint.

**(11) Treatment Alternatives to Commitment.** If a child who is found to be incompetent does not meet the governing commitment criteria the court shall order the Department of Human Services to provide appropriate treatment and training in the community. The competency determination must be reviewed at least every six months, or at the end of any extended period of treatment or training, and any time the child appears to have attained competency or will never attain competency, by the service provider. A copy of written report evaluating the child's competency must be filed by the provider with the court, the Department of Human Services and/or counsel for the child.

**(12) Speedy Trial Rights Tolloed.** Upon the filing of a motion by the child's counsel alleging the child to be incompetent to proceed or upon an order of the court finding a child incompetent to proceed, speedy trial timetables shall be tolled until a subsequent finding of the court that the child is competent to proceed. Proceedings under this subdivision initiated by the court on its own motion or the Government's motion may toll the speedy trial period.

**(b) Insanity at Time of Delinquent Act or Juvenile Probation Violation.**

(1) If the child named in the complaint intends to plead insanity as a defense, the child shall advise the court in writing not less than 10 days before the adjudicatory hearing and shall provide the court with a statement of particulars showing as nearly as possible the nature of the insanity expected to be proved and the names and addresses of witnesses expected to prove it. Upon the filing of this statement, on motion of the state, or on its own motion, the court may cause the child to be examined in accordance with the procedures in this rule.

(2) The court, upon good cause shown and in its discretion, may waive these requirements and permit the introduction of the defense, or may continue the hearing for the purpose of an examination in accordance with the procedures in this rule. A continuance granted for this purpose will toll the time for trial.

**(c) Appointment of Expert Witnesses; Detention of Child for Examination.**

(1) When a question has been raised concerning the sanity or competency of the child named in the complaint and the court has set the matter for an adjudicatory hearing, hearing on violation of juvenile probation, or a hearing to determine the mental condition of the child, the court may on its own motion, and shall on motion of the Government, appoint no more than three, nor fewer than two, disinterested qualified experts to examine the child as to competency or sanity of the child at the time of the commission of the alleged delinquent act or violation of juvenile probation. Attorneys for the Government and the child may be present at the examination. An examination regarding sanity should take place at the same time as the examination into the competence of the child to proceed, if the issue of competency has been raised. Other competency evidence may be introduced at the hearing. The appointment of experts by the court shall not preclude the Government or the child from calling other expert witnesses to testify at the adjudicatory hearing, hearing on violation of juvenile probation, or at the hearing to determine the mental condition of the child.

(2) The court only as provided by general law may order the child held in detention pending examination. This rule shall in no way be construed to add any detention powers not provided by statute or case law.

(3) When counsel for a child shall have reason to believe that the child may be incompetent to proceed or may have been insane at the time of the alleged delinquent act or juvenile probation violation, counsel may so inform the court. The court shall appoint 1

expert to examine the child to assist in the preparation of the defense. The expert shall report only to counsel for the child, and all matters related to the expert shall be deemed to fall under the lawyer-client privilege.

**(d) Competence to Proceed; Scope of Examination and Report.**

**(1) Examination by Experts.** On appointment by the court, the experts shall examine the child with respect to the issue of competence to proceed as specified by the court in its order appointing the experts.

(A) The experts first shall consider factors related to whether the child meets the criteria for competence to proceed; that is, whether the child has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and whether the child has a rational and factual understanding of the present proceedings.

(B) In considering the competence of the child to proceed, the examining experts shall consider and include in their reports the child's capacity to:

- (i) appreciate the charges or allegations against the child;
- (ii) appreciate the range and nature of possible penalties that may be imposed in the proceedings against the child, if applicable;
- (iii) understand the adversary nature of the legal process;
- (iv) disclose to counsel facts pertinent to the proceedings at issue;
- (v) display appropriate courtroom behavior; and
- (vi) testify relevantly.

The experts also may consider any other factors they deem to be relevant.

(C) Any report concluding that a child is not competent must include the basis for the competency determination.

**(2) Treatment Recommendations.** If the experts find that the child is incompetent to proceed, they shall report on any recommended treatment for the child to attain competence to proceed. A recommendation as to whether residential or nonresidential treatment or training is required must be included. In considering issues to treatment, the experts shall report on the following:

(A) The mental illness, intellectual disability, or mental age causing incompetence.

(B) The treatment or education appropriate for the mental illness or intellectual disability of the child and an explanation of each of the possible treatment or education alternatives, in order of recommendation.

(C) The availability of acceptable treatment or education. If treatment or education is available in the community, the experts shall so state in the report.

(D) The likelihood of the child attaining competence under the treatment or education recommended, an assessment of the probable duration of the treatment required to restore competence, and the probability that the child will attain competence to proceed in the foreseeable future.

(E) Whether the child meets the criteria for involuntary hospitalization or involuntary admissions to residential services under 5 V.I.C. §2523.

**(3) Insanity.** If a notice of intent to rely on an insanity defense has been filed before an adjudicatory hearing or a hearing on an alleged violation of juvenile probation, when

ordered by the court the experts shall report on the issue of the child's insanity at the time of the delinquent act or violation of juvenile probation.

**(4) Written Findings of Experts.** Any written report submitted by the experts shall:

- (A) identify the specific matters referred for evaluation;
- (B) describe the procedures, techniques, and tests used in the examination and the purposes of each;
- (C) state the expert's clinical observations, findings, and opinions on each issue referred for evaluation by the court and indicate specifically those issues, if any, on which the expert could not give an opinion; and
- (D) identify the sources of information used by expert and present the factual basis for the expert's clinical findings and opinions.

**(5) Limited Use of Competency Evidence.**

(A) The information contained in any motion by the child for determination of competency to proceed or in any report filed under this rule as it relates solely to the issues of competency to proceed and commitment, and any information elicited during a hearing on competency to proceed or commitment held under this rule, shall be used only in determining the mental competency to proceed, the commitment of the child, or other treatment of the child.

(B) The child waives this provision by using the report, or any parts of it, in any proceeding for any other purpose. If so waived, the disclosure or use of the report, or any portion of it, shall be governed by the applicable rules of evidence and juvenile procedure. If a part of a report is used by the child, the state may request the production of any other portion that, in fairness, ought to be considered.

**(e) Procedures After Judgment of Not Guilty by Reason of Insanity**

(1) When the child is found not delinquent of the delinquent act or violation of juvenile probation because of insanity, the court shall enter such a finding and judgment.

(2) After finding the child not delinquent by reason of insanity, the court shall conduct a hearing to determine if the child presently meets the statutory criteria for involuntary commitment to a residential psychiatric facility.

(A) If the court determines that the required criteria have been met, the child shall be committed by the juvenile court to The Department of Human Services for immediate placement in a residential psychiatric facility.

(B) If the court determines the such commitment criteria have been established, the court, after hearing, shall order that the child receive recommended and appropriate treatment at an outpatient facility or service.

(C) If the court determines that treatment is not needed, it shall discharge the child.

(D) Commitment to a residential psychiatric facility of a child adjudged not guilty by reason of insanity shall be governed by the provisions of 5 V.I.C. §2522, except that requests for discharge or continued involuntary hospitalization of the child shall be directed to the court that committed the child.

(E) If a child is not committed to a residential psychiatric facility and has been ordered to receive appropriate treatment at an outpatient facility or service and it appears during the course of the ordered treatment

(i) that treatment is not being provided or that the child now meets the criteria for hospitalization, the court shall conduct a hearing pursuant to subdivision (e)(2) of this rule.

(ii) that the child no longer requires treatment at an outpatient facility or service, the court shall enter an order discharging the child.

(F) During the time the child is receiving treatment, either by hospitalization or through an outpatient facility or service, any party may request the court to conduct a hearing to determine the nature, quality, and need for continued treatment. The hearing shall be conducted in conformity with subdivision (e)(2) of this rule.

(G) No later than 30 days before reaching age 19, a child still under supervision of the court under this rule shall be afforded a hearing. At the hearing, a determination shall be made as to the need for continued hospitalization or treatment. If the court determines that continued care is appropriate, proceedings shall be initiated under 5 V.I.C. §2522. If the court determines further care to be unnecessary, the court shall discharge the child.

### **Rule 35. Adjudicatory Hearing in Delinquency Proceedings.**

**(a) Timing.** An adjudicatory hearing shall be scheduled promptly, in accord with 5 V.I.C. 2517, and the child shall appear before the court at the times set.

**(b) Confirmation of Advice of Rights and Charges.** As required by § 2517, the court shall assure at the outset of the adjudicatory hearing that the child has been advised of rights under law, and informed of the specific allegations in the complaint and given an opportunity to admit or deny such allegations.

**(c) Pleas.**

**(1) Plea of Delinquent.** Procedures and standards for acceptance of a plea of delinquent shall be governed by Rule 32.

**(2) Plea of Not Delinquent; Timing of Hearing.** If the child pleads not delinquent the court may proceed at once to an adjudicatory hearing, or to give the Territory or the child a reasonable time for the preparation of the case.

**(d) Conduct of Hearing; Findings.**

**(1) Trial by Court; Burden of Proof.** The adjudicatory hearing shall be conducted by the judge without a jury. At this hearing the court determines whether the allegations of the petition have proven beyond a reasonable doubt.

**(2) Testimony.** Testimony from all witnesses shall be taken under oath in accord with Virgin Islands law. The child may be sworn and testify in his or her own behalf. The child may be cross-examined as other witnesses. No child shall be compelled to give testimony against himself or herself, nor shall the Attorney General be permitted to comment on the failure of the child to testify in his or her own behalf.

**(3) Findings.** If the court finds the allegations in the complaint have not been established by proof beyond a reasonable doubt, it shall enter an order recording that finding and dismiss the complaint, ordering the child discharged from any detention or shelter care previously ordered.

**(e) Joint and Separate Trials.** When two or more children are alleged to have committed a delinquent act or violation of law, they shall be tried jointly unless the court in its discretion orders separate trials, applying the provisions of V.I. Rules of Criminal Procedure 13 and 14.

**(f) Dispositional Alternatives.** If the court finds that the evidence proves allegations of the complaint beyond a reasonable doubt, it may enter an order of adjudication or withhold adjudication as provided 5 V.I.C. §2519.

(1) If the pre-disposition report required by law is available, the court may proceed immediately to disposition or continue the case for a disposition hearing.

(2) If the pre-disposition report is not available, the court shall continue the case for a disposition hearing. If the case is continued the court may order the child detained.

### **Rule 36. Dispositional Hearing in Delinquency Proceedings.**

**(a) Information Available to Court.** At the disposition hearing the court, after establishing compliance with the dispositional considerations, determinations, and discussions required by law, may receive any relevant and material evidence helpful in determining the proper disposition to be made. It shall include written reports required by law, and may include, but shall not be limited to, the child's need for substance abuse evaluation and/or treatment, and any psychiatric or psychological evaluations of the child that may be obtained and that are relevant and material. Such evidence may be received by the court and may be relied upon to the extent of its probative value, even though not competent in an adjudicatory hearing.

**(b) Presence of Counsel.** Counsel for the child shall be present at the dispositional hearing.

**(c) Disclosure.** The child, the guardian ad litem, the child's attorney, the child's parent or custodian, and the Attorney General shall be entitled to disclosure of all information in the pre-disposition report and all reports and evaluation used by The Department of Human Services or other authorized agency in the preparation of the report. The parties shall be afforded a reasonable opportunity to examine and controvert oral or written reports so received and cross-examine individuals making reports.

**(d) Disposition Order.** In support of any order or decree, the court may order the parents or other person who has been found by the court to be encouraging, causing or contributing to the acts or conditions which bring the child within the purview of the court's, to do or omit to do any acts required or forbidden by law, or to provide for an order of protection as per 5 V.I.C. §2552, when the judge deems such requirement necessary for the welfare of the child. In case of failure to comply with such requirement, the court may proceed against such persons for contempt of court. The order shall make all findings of fact required by law, and shall state:

(1) the name and age of the child;

(2) the disposition of the matter;

(3) general and specific conditions or sanctions; and

(4) the date and time when issued;

**(e) Disposition – Delinquent.** If a child is found to be delinquent or a person in need of supervision, the court may make any of the following dispositions for the child's supervision, care, and rehabilitation:

(1) permit the child to remain with his parents, guardian or other person responsible for the child's care, subject to such conditions and limitations as the court may prescribe

including, but not limited to, home evaluations, parenting skills counseling or courses and home evaluations or assessments;

(2) place the child on probation under The Department of Human Services with such conditions as described in 5 V.I.C. §2524;

(3) order such care and treatment as the court may deem best including detention care or shelter care as appropriate and except as herein otherwise provided.

**(f) Disposition – Delinquent Over Thirteen.** If a child is found to be delinquent and the child is over thirteen years old, the child may be committed to the custody of The Department of Human Services for placement in a residential institution for a determinate or indeterminate period, but in no event shall continue beyond the child's nineteenth birthday, provided that the requirements of 5 V.I.C. § 2522 have been met.

(1) If a child is committed to The Department of Human Services for an indeterminate period of time, the court may:

(i) order the child to be returned to the court and for The Department of Human Services to show the court the child is ready to re-enter the community before the child is released; or

(ii) leave the release date to be the decision of The Department of Human Services. However, the child must be returned to the court at least once a year for the court to review the child's progress.

(2) If the court vests legal custody of a child to an agency, institution or department, the court shall order that all copies of the clinical reports, pre-disposition study/report, and other information pertinent to the care of the treatment of the child be released to said agency, institution, or department.

### **Rule 37. Revocation of Juvenile Probation (5 V.I.C. §2525)**

**(a)** A child who has been placed on juvenile probation may be brought before the court upon allegations of violation(s).

**(b)** Any officer, agency, official or other person with personal knowledge may file with the court an affidavit setting forth facts alleged to constitute violation(s) by a child of the terms of juvenile probation, stating the grounds for revocation of such probation. Copies of the sworn affidavit shall be provided to the Attorney General, the child's parents or custodians, and the child.

**(c)** When revocation proceedings are sought, the Department of Justice shall file a complaint alleging violation of juvenile probation. The complaint shall incorporate and reference the sworn affidavit filed pursuant to subpart (b) of this Rule. All such complaints must be signed by the Attorney General or an authorized designee of that office.

**(d)** Upon receiving the probation violation complaint from the Attorney General, the court may by order initiate revocation proceedings. The order must incorporate and reference the affidavit described in subdivision (b).

**(e)** The court may also order that the child be detained.

**(f)** All interested persons, including the child, shall have an opportunity to be heard at the revocation hearing. The Department of Justice bears the burden of proving the violation by clear and convincing evidence.

(g) If the court finds that a child has violated the terms of his or her probation, the court shall enter an order revoking, modifying, terminating, continuing probation, or order any other disposition authorized by law.

Rules 38 – 39. Reserved

## Part C – Proceedings re Persons in Need of Supervision (PINS)

### Rule 40. Parties in Cases of Persons In Need of Supervision

(a) **Definitions.** In addition to the definitions set forth in Rule 2 of these Family Rules and Procedures, for the purposes of the rules regarding persons in need of supervision, the terms “party” and “parties” shall include the Attorney General, the child, the parent(s), the guardian ad litem where appointed, the custodian(s), the child’s attorney where appointed, and every person upon whom service of summons is required by law.

(b) **Other parties.** The Virgin Islands Department of Justice and or the Virgin Islands Department of Human Services may become a party upon notice to all other parties and the court. The court may add additional parties.

### Rule 41. Taking a Child in Need of Supervision Into Custody

(a) **Affidavit.** An affidavit may be filed by any person with personal knowledge, alleging facts sufficient under existing law to establish grounds to take a child in need of supervision into custody. The affidavit shall:

- (1) be in writing and signed under oath;
- (2) specify the name, address, and gender of the child or, if unknown, designate the child by any name or description by which the child can be identified with reasonable certainty;
- (3) specify that the child is of an age subject to the jurisdiction of the court; and
- (4) state the reasons why the child is being taken into custody, or that the child should be taken into custody.

(b) **Criteria for Order.** The court may issue an order to take a child into custody based on sworn testimony meeting the criteria set forth in subpart (a) of this Rule.

(c) **Order.** The order to take into custody shall:

- (1) be in writing and signed;
- (2) specify the name, address, and sex of the child or, if unknown, designate the child by any name or description by which the child can be identified with reasonable certainty;
- (3) specify that the child is of an age subject to the jurisdiction of the court;

- (4) state the reasons why the child is being taken into custody;
- (5) order that the child be placed in a suitable place pending a shelter hearing as provided by law; and
- (6) state the date when issued.

**Rule 42. Petitions re Persons in Need of Supervision (“PINS”)**

**(a) Contents of PINS Petition.**

(1) A petition alleging that a child is in need of supervision may be filed only by the office of the Attorney General. More than one allegation of children in need of supervision may appear on the same petition, in separate counts. Two or more children may be the subject of the same petition.

(2) Each petition shall be entitled as a petition for child(ren) in need of supervision and shall allege sufficient facts showing the child to be in need of supervision based upon applicable law, and shall:

- (A) specify the name, address, and gender of the child, or, if unknown, designate the child by any name or description by which the child can be identified with reasonable certainty;
- (B) specify that the child is of an age subject to the jurisdiction of the court;
- (C) state the reasons why the child needs to be placed in a shelter;
- (D) recommend where the child is to be placed or the agency to be responsible for placement;
- (D) be signed the Attorney General; and
- (E) include a certificate of service to all parties and their attorneys of record.
- (F) contain allegations as to the identity and residence of the parents or custodians, if known.

**(b) Verification.** The petition shall be signed by the Attorney General, stating under oath the Attorney General’s good faith.

**(c) Amendments.** At any time before or during an adjudicatory hearing, an amended petition may be filed or that petition may be amended by motion. Amendments shall be freely permitted in the interest of justice and the welfare of the child. A continuance may be granted upon motion and a showing that the amendment prejudices or materially affects any party.

**(d) Defects and Variances.** If the court is of the opinion that the petition is so vague, indistinct, and indefinite as to mislead the child, parent, or custodian and prejudice any of them in the preparation of a defense, the Attorney General may be required to furnish a more definite statement.

**(e) Voluntary Dismissal.** At any time before entry of an order of adjudication, the child(ren) in need of supervision petition may be voluntarily dismissed by the Attorney General without leave of the court by serving a notice of dismissal on all parties, or, if during a hearing, by so stating on the record. Unless otherwise stated, the dismissal shall be without prejudice.

**(b) Shelter Hearing.**

- (1) The Attorney General shall make a diligent effort to notify the parent or custodian of the child and shall notify his or her attorney of record of the date, time, and place of the

hearing. The Attorney General shall list all parties notified of the hearing on the certificate of service on the shelter petition.

(2) The court shall conduct an informal hearing on the petition without unnecessary delay. The court shall determine at the hearing whether the criteria provided by law for placement in a shelter have been met.

(3) At the hearing all interested persons present shall have an opportunity to be heard on the criteria for placement as provided by law.

(4) The court may base its determination on a sworn complaint, testimony, or affidavit and may hear all relevant and material evidence, including oral and written reports, to the extent of its probative value even though it would not be competent at an adjudicatory hearing.

(5) The court shall advise the parties of:

(A) their right to be represented by counsel;

(B) the reason for the child being in custody and why continued placement is requested; and

(C) their right to present placement alternatives.

**(c) Shelter Order.** The order shall be in writing and shall:

(1) state the name, age, and gender of the child and, if the child's age is unknown, that the child is believed to be of an age which makes him or her subject to the jurisdiction of the court;

(2) including findings as provided by law;

(3) designate the place where the child is to be placed or the person or agency that will be responsible for this placement along with any special conditions found to be necessary;

(4) state the date and time where issued;

(5) indicate when the child shall be released from the shelter or set a review of shelter hearing within the time limits provided by law;

(6) include a certificate of service to all parties and their attorneys of record; and

(7) appoint counsel to represent the child.

**(d) Release From Shelter Care.** No child shall be released from shelter after a shelter order has been entered except by order of the court unless the shelter order authorizes release by the agency providing such shelter.

#### **Rule 44. Answer; Arraignment; Plea; Prehearing Conferences in PINS Cases**

**(a) Answer.** The child through counsel, parent, or custodian of the child may enter an oral or written answer to the petition or remain silent. If the child through counsel remains silent or pleads evasively, or the parent, guardian, or legal custodian denies it, the court shall enter a denial of the petition. The court shall determine that any admission or consent to the petition is made voluntarily and with a full understanding of the nature of the allegations and the possible consequences of such admission or consent and that the parties have been advised of the right to be represented by counsel. The court shall incorporate these findings into its order in addition to findings of fact specifying the act or acts, by whom committed, and facts upon which the

findings are based. If the answer admits the allegations of the petition it shall constitute consent to predisposition study.

**(b) Arraignment.** If a written answer has not been filed by the child through counsel, parent, guardian, or legal custodian before the adjudicatory hearing, the court shall conduct a hearing to determine whether an admission, consent, or denial of the petition shall be entered. If an admission or consent is entered, the court shall proceed as set forth in these rules. If a denial is entered the court shall set an adjudicatory hearing within the period of time provided by law.

**(c) Withdrawal of Plea.** The court may at any time before the beginning of a disposition hearing permit an admission of the allegations of the petition to be withdrawn and, if an adjudication has been entered thereon, set aside such adjudication. In the subsequent adjudicatory hearing the court shall disregard an admission that has been withdrawn.

**(d) Prehearing Conference.** Before the conduct of any adjudicatory hearing the court may set or the parties may request that a prehearing conference be held to determine the order in which each party may present witnesses or evidence and the order in which cross-examination and argument shall occur. The parties and the court may consider any other matters which may aid in the conduct of the adjudicatory hearing.

#### **Rule 45. Adjudicatory Hearing in PINS Cases**

**(a) Hearing by Judge.** The adjudicatory hearing shall be conducted by the judge as provided in Rule 35 of these Rules. At this hearing the court shall determine whether the allegations of the petition have been sustained.

**(b) Examination of Witnesses.** Any party shall have the right to examine and cross-examine the witnesses.

**(c) Presence of parties.** All parties have the right to be present at all adjudicatory hearings. No party shall be excused from the hearing unless so ordered by the court for disruptive behavior.

**(d) Joint and Separate Hearings.** When two or more children are alleged to be children in need of supervision, the hearing may be held simultaneously when the several children involved are related to each other or involved in the same case, unless the court orders separate hearings.

**(e) Dismissal for Insufficiency of the Evidence.** In all proceedings if at the close of the evidence for the Attorney General the court is of the opinion that the evidence is insufficient as a matter of law to warrant a finding of child(ren) in need of supervision, shall on its own motion or on the motion of any party, enter an order dismissing the petition for insufficiency of evidence.

**(f) Findings and Orders.** If the court finds that the evidence supports the allegations of the petition, it may make a finding that the child is in need of supervision as provided by law. In all cases the court shall enter a written order specifying the facts upon which the findings are based. If the predisposition and other reports required by law are unavailable, or by order of the court, any portion of the disposition hearing may be reset within a reasonable time. If the case is continued the court may refer the case to appropriate agencies for additional study and recommendation. The court may order the child into a suitable placement under such reasonable conditions as the court may direct.

#### **Rule 46. Dispositional Hearing in PINS Cases**

**(a) Information Available to Court.** At the disposition hearing the court, after establishing compliance with the dispositional considerations, determinations, and discussions required by law, may receive any relevant and material evidence helpful in determining the proper disposition to be made. It shall include written reports required by law and may include evaluations of the child or the parent or custodian that may be obtained and that are relevant and material. Such evidence may be received by the court and may be relied upon to the extent of its probative value even though not competent in an adjudicatory hearing.

**(b) Disclosure to parties.** All parties shall be entitled to disclosure of all information in all reports submitted to the court.

**(c) Orders of Disposition.** The court shall in its written order of disposition include:

- (1) the placement or custody of the child;
- (2) special conditions of placement and visitation;
- (3) evaluation, counseling, treatment activities, and other actions to be taken by the parties where ordered;
- (4) supervising or monitoring agencies and continuation or discharge of the guardian ad litem, when appropriate;
- (5) the period of time or date for subsequent case review when required by law; and
- (6) such other requirements deemed necessary to protect the health, safety, and well-being of the child.

**(d) Out-of-Home Placement.** If the court places the child out of the home of the parents, guardians or legal custodians, subsequent proceedings shall be governed by the provisions set forth in Part D of these Family Rules and Procedures.

#### **Rule 47. Post-Disposition Relief in PINS Cases**

**(a) Modification of Placement.** A child who has been placed in the child's own home, in the home of a relative, or in some other place under the supervision of the Department of Human Services may be brought before the court by the parent, guardian, or any interested person on a motion for modification of placement. Upon notice to all parties, the court shall conduct a hearing and enter an order changing the placement, modifying the conditions of placement, continuing placement as previously ordered, or placing the child with the Department of Human Services.

**(b) Motion for Termination of Supervision or Jurisdiction.** Any party requesting termination of agency supervision or the jurisdiction of the court, or both, shall do so by motion. After proper notice, the court shall hear all parties present and enter an order terminating supervision or terminating jurisdiction and supervision or continuing them as previously ordered. The court shall not terminate the proceeding unless the child is returned to the parent or placed with a legal guardian.

Rules 48 – 49. Reserved.

## Part D – Rules for Abuse & Neglect Proceedings

### Rule 50. Scope and Purpose of Rules; Construction; Shelter Care Provisions

(a) **Generally.** In all proceedings in which a child is alleged to be abused and/or neglected as defined by the Children's Policy for the Territory codified under Title 5 of the Virgin Islands Code §2501 to §2555, the general Family Rules and Procedures shall apply except as provided in the specific abuse and neglect provisions in this Part D, or other Virgin Islands law. To the extent feasible, these Rules shall be construed together with other court rules to facilitate the consolidated adjudication of related matters involving the same family or household. These rules shall be liberally construed to achieve safe, stable, secure permanent homes for abused and/or neglected children and fairness to all litigants. These rules are designed to accomplish the following purposes:

- (1) To provide fair, timely and efficient disposition of cases involving suspected child abuse or neglect;
- (2) To provide for judicial oversight of case planning;
- (3) To ensure a coordinated decision-making process;
- (4) To reduce unnecessary delays in court proceedings through strengthened court case management; and
- (5) To encourage the involvement of all parties, including children, in the litigation as well as the involvement of all agencies and resource personnel providing services to any party.

(b) **Shelter Care.** Rules with respect to shelter care – applicable at multiple stages of abuse and neglect proceedings – are set forth in Part E of these Family Rules and Procedures.

### Rule 51. Definitions, Notice and Participation in Abuse and Neglect Proceedings.

(a) **Generally.** As used in this Part D, Rules for Abuse and Neglect Proceedings, unless it is otherwise provided or the context requires a different construction, application or meaning, the definitions of terms in Rule 2 of these Family Rules and Procedures shall be applied. For the purposes of these rules, when the phrase “parent(s) or legal custodian(s)” is used, it refers to the rights or responsibilities of the parent and, only if there is no living parent with intact parental rights, to the rights or responsibilities of the legal custodian who has assumed the role of the parent.

(b) **Definitions.** As used in these rules, these terms are defined as follows:

*Adjudicatory hearing* shall mean the hearing contemplated by 5 V.I.C § 2548 to determine whether a child has been abused and/or neglected as alleged in the complaint.

*CASA* shall mean Court-Appointed Special Advocate as set forth in 5 V.I.C. §2555.

*Child case plan* shall mean the plan prepared by the Department of Human Services pursuant to § 2549.

**Complaint** shall mean the petition instituting child abuse and/or neglect proceedings under 5 V.I.C. §§2542 – 2555.

**Disposition hearing** shall mean the hearing contemplated by 5 V.I.C. § 2549.

**Preliminary hearing** shall mean the hearing contemplated by 5 V.I.C. § 2544.

**Permanency hearing** shall mean the hearing contemplated by Rules 68 and 69 of these Family Rules and Procedures.

**Informal hearing** shall mean the hearing contemplated by 5 V.I.C. § 2544.

**Family case plan** shall mean the plan prepared by the Department of Human Services pursuant to 5 V.I.C. § 2549.

**Guardian ad Litem** means the attorney appointed to represent a child, or children as set forth in Rule 10.

**Parties** mean the child, parents, and the Department of Justice.

(c) **Notice.** Persons entitled to notice and the right to be heard are persons other than parties who include the CASA when appointed, foster parents, preadoptive parents, or custodial relatives providing care for the child.

(d) **Participants.** Participants are all persons who are not parties but who should receive notice of hearings involving the child. Participants include foster parents or the legal custodian of the child, identified prospective parents, actual custodians of the child, grandparents entitled to notice of an adoption proceeding as provided by law, and any other person whose participation may be in the best interest of the child. The court may add additional participants. Participants may be granted leave of court to be heard without the necessity of filing a motion to intervene and shall have no other rights of a party except as provided by law.

## **Rule 52. Emergency Temporary Custody Initiated Without Court Order.**

(a) **Authorization.** A child who may be abused or neglected may be taken into custody without prior issuance of an order of the court if the child is in imminent danger of death or serious injury. Without prior court order any physician, law enforcement officer or the Department of Human Services shall be authorized to take physical custody of a child when there is probable cause to believe that the child is neglected or abused and there is imminent danger to that child's life or health.

(b) **Affidavit.** An affidavit shall be filed by a physician, law enforcement officer or the Department of Human Services alleging facts under existing law sufficient to establish grounds to take a child into custody. The affidavit shall:

- (1) be in writing and signed;
- (2) specify the name, address, and gender of the child or, if unknown, designate the child by any name or description by which the child can be identified with reasonable certainty;
- (3) specify that the child is of an age subject to the jurisdiction of the court; and
- (4) state the reasons why the child is being taken into custody.

(c) **Notice.** The Department of Human Services shall make every reasonable effort to inform the person responsible for the child's welfare of the custodial situation and of the place or facility to which the child was taken, unless there would be a threat posed to the child from such disclosure. Such notice shall be given without any unnecessary delay, and in any event within 24 hours of the child being taken into custody.

**(d) Complaint or Petition.**

(1) Within two days after taking a child into custody, excluding weekends and holidays, the Department of Human Services shall file a complaint or petition, the affidavit, and report to the court the specific circumstances justifying the taking of emergency temporary custody and the specific measures implemented to safeguard the physical and emotional well-being of the child.

(2) The complaint or petition shall allege facts under existing law sufficient to establish grounds to take a child into custody, and shall:

(A) be in writing and signed;

(B) specify the name, address, date of birth, and gender of the child, or, if unknown, designate the child by any name or description by which he or she can be identified with reasonable certainty;

(C) specify that the child is of an age subject to the jurisdiction of the court; and

(D) state the reasons the child was taken into custody.

**(e) Process; Summons.** Upon the filing of a petition, the clerk shall issue a summons requiring the person upon whom it is served to appear for a hearing at a time and place specified. Except in cases of medical emergency, the time of hearing shall not be less than 24 hours after service of the summons. If the child is not detained by an order of the court, the summons shall require the custodian to produce the child at the said time and place. A copy of the petition or complaint shall be attached to the summons.

**(f) Subpoenas.** Upon the application of a party, the clerk shall issue, and the court on its own motion may issue, subpoenas requiring attendance and testimony of witnesses and production of records, documents, or other tangible objects at any hearing. This subdivision shall not in any way limit the state attorney's power to issue subpoenas.

**(g) Service.** The summons and other process shall be served upon such persons and in such manner as required by Rule 4 of the Virgin Islands Rules of Civil Procedure. If the parents or custodian are out of the state and their address is known, the clerk shall give them notice of the proceedings by mail. Service of process may be waived. Authorized agents of the Department of Justice or the court Marshal may also serve summons and other process upon such persons and in such manner as required by law.

**(h) Service on Represented Parties.** When service is required or permitted to be made upon a party represented by an attorney, service shall be made upon the attorney unless service upon the party is ordered by the court. All documents required or permitted to be served on another party must be served by e-mail, unless the parties otherwise stipulate or this rule otherwise provides.

**(i) Informal Hearing.** The court may conduct an informal hearing and the court may order that the child remain in emergency temporary custody if the standards, procedures and notice provisions of 5 V.I.C. § 2544(b) have been followed. This may be done without written or oral notice to the respondent only if:

(1) it appears that there is probable cause to believe the child is in imminent danger to that child's life or health; and

(2) the Attorney General shows to the court the efforts, if any, which have been made to give the notice or reasons supporting the claim that notice should not be required.

### **Rule 53. Probable Cause Hearing in Emergency Custody Cases**

**(a) Scheduling.** When a child has been taken into emergency custody without a court order, as provided in 5 V.I.C. § 2544 and Rule 52, the court shall hold a probable cause hearing within five days after the child is taken into custody, including weekends and holidays, to determine whether there is probable cause to believe that the child is neglected or abused and the child is in imminent risk of death or serious injury and that removal is necessary until a final order of disposition.

(1) At the hearing, all interested persons present shall have an opportunity to be heard and present evidence on the criteria for placement provided by law.

(2) The court may base its determination on a sworn complaint, testimony, or an affidavit and may hear all relevant and material evidence, including oral and written reports, to the extent of its probative value even though it would not be competent at an adjudicatory hearing;

(3) The court shall advise the parent or legal custodian of:

(A) the right to be represented by counsel as provided by law;

(B) the reason the child is in custody and why continued placement is requested;

(C) the right to present placement alternatives; and

(D) the time, date, and location of the next hearing and of the importance of the parents' or legal custodians' active participation in subsequent proceedings and hearings.

(4) The court shall appoint:

(A) a guardian ad litem to represent the child unless the court finds representation unnecessary;

(B) an attorney to represent the child if the court finds the appointment necessary or required by law; and

(C) an attorney to represent the parent.

(5) The court shall determine visitation rights absent a clear and convincing showing that visitation is not in the best interest of the child.

(6) The court shall inquire of the parents whether the parents have relatives who might be considered for placement of the child. The parents shall provide to the court and all parties identification and location information regarding the relatives. The court shall advise the parents that the parents have a continuing duty to inform the Department of Human Services of any relative who should be considered for placement of the child.

(7) The court shall advise the parents that if the parents fail to substantially comply with the case plan their parental rights may be terminated and the child's out of home placement may become permanent.

(8) The court must request that the parents' consent to provide access to the child's medical and educational records and provide information to the court, the Department of Human Services, or its contract agencies, and any guardian ad litem or attorney for the child. If a parent is unavailable, is unable to consent, or withholds consent and the court determines access to the records and information is necessary to provide services for the child, the court shall issue an order granting access.

(9) The court may order the parents to provide all known medical information to the Department of Human Services and to any others granted access by such court order.

(10) If the child has or is suspected of having a disability and the parent is unavailable pursuant to law, the court must appoint a surrogate parent or refer the child to the Department of Education for appointment of a surrogate parent.

**(b) Preliminary Orders.** The court, for good cause shown, may provide a preliminary order for any of the following until a final order of disposition:

(1) permit the child to remain with parents or other persons responsible for the child's care, subject to such conditions and limitations as the court may prescribe; or

(2) place the child under protective supervision; or

(3) make the child the subject of an order of protection; or

(4) transfer custody to any of the following:

(A) a relative or other individual found by the court to be qualified and willing to receive and care for the child;

(B) a public or private agency responsible for the care of abused or neglected children.

**(c) Notice.** Notice shall be provided as required in Rule 55.

#### **Rule 54. Ex Parte Order for Custody in Abuse and Neglect Proceedings**

**(a) Applying for Order of Emergency Custody.** If, prior to or at the time of the filing of a petition alleging abuse or neglect, it appears to an investigating law enforcement officer, medical doctor or social worker that there are grounds for taking a child into custody under 5 V.I.C. § 2544 or other laws of the Virgin Islands, such officer, medical doctor or social worker may apply to the court for an order for emergency custody.

**(b) Contents of Application.** After approval by the Attorney General or an authorized Assistant Attorney General, the law enforcement officer, medical doctor or social worker shall submit an application for an order for custody to the court, supported by testimony or affidavit(s). The application shall be in writing and shall include:

(1) the name and position of the applicant with office address and telephone number;

(2) a statement of one or more following grounds for taking the child into custody:

(A) A law enforcement officer has reasonable grounds to believe that the child is in imminent danger of death or serious injury from his or her surroundings and that removal of the child from those surroundings is necessary, in accord with 5 V.I.C. § 2544(a);

(B) After consultation with the Chief of the Child Protective Services Division of the Department of Human Services, or an authorized designee of that official, a social worker has reasonable grounds to believe that the child is in imminent danger of death or serious injury and that the child's removal from his or her surroundings is necessary;

(C) A medical doctor has reasonable grounds to believe that the child is in imminent danger of death or serious injury;

(D) The Chief of the Child Protective Services Division of the Department of Human Services or an authorized designee of that official has received written

notification by the chief executive officer of a hospital located in the United States Virgin Islands that the child has resided in the hospital for at least 10 calendar days following the birth of the child, despite a medical determination that the child is ready for discharge from the hospital, and the parent, guardian or custodian of the child, as established by the hospital admission records, has not taken any action or made any effort to maintain a parental, guardianship, or custodial relationship or contact with the child.);

(E) The child may leave or be removed from the jurisdiction of the court or will not be brought to the hearing notwithstanding service of the summons;

(F) allegations of fact supporting the existence of such ground(s);

(G) a statement on whether services are currently available that could protect the minor or whether no services can reasonably be provided at this time that would eliminate the necessity for removal; and

(H) the steps taken by the applicant to ascertain whether services are available that would eliminate the necessity for removal including but not limited to placement with family members or other individuals who are willing and capable of caring for the child.

(3) If the application is submitted after the initial appearance before the court, the application shall state whether all attorneys of record and any unrepresented parent or custodian were notified of the grounds for the application and state the reasons for any failure to notify.

**(c) Issuance of an Order For Custody.**

(1) ***Sufficient Grounds to Issue Order.*** The court may issue an order authorizing the taking into custody of the child upon a finding of reasonable grounds to believe that the allegations in the application are true. The court may consider all reliable and credible evidence, including hearsay, in making a decision, without prior notice to the parent or guardian

(2) ***Contents of Order.*** The order for custody shall be signed by the court, shall state the name, age (if known), and address of the child to be taken into custody, and shall specify a return date. In addition, the order shall provide the name of an agency official who can be contacted about the child, the official's telephone number, and a statement of where the child will be taken unless there is a danger that the child will be at risk from the parent or guardian interfering with or jeopardizing the placement. The order for custody may be in the form of a separate document or may be endorsed upon the summons when the summons and petition have been submitted at the time of the application.

**(d) Execution of Custody Order; Return; Notice.**

(1) ***By whom.*** An order for custody, whether endorsed upon a summons or issued as a separate document, shall be executed by a law enforcement officer or, where authorized by law, a social worker.

(2) ***Territorial limits; time period.*** An order for custody may be executed at any place in the United States Virgin Islands, but not more than one year after the date of issuance unless extended by the court.

(3) ***Manner of execution; notice to parents or custodians.*** The order for custody shall be executed by the taking into custody of the child named therein. The officer or social worker or doctor need not have the order in his or her possession at the time of the taking

into custody, but upon request the officer or social worker shall show the order to the child where and when appropriate and to the parent, guardian, or custodian within 24 hours or before the next hearing, whichever is sooner.

**(4) Notice to parents, custodians or guardians.** Notice of the application for an ex parte order for custody shall be given in accord with the provisions of Rule 55. The officer, agency, or social worker or doctor shall diligently use all reasonable and appropriate efforts to notify the parent, guardian or custodian, orally and in writing, that an order for custody of the child has been sought. Such notice shall be given without any unnecessary delay, and in any event within 48 hours.

**(5) Return.** On or before the return day, the person to whom an order for custody was delivered for execution shall make a return thereof to the court. At the request of the Attorney General or authorized designee, an order for custody returned unexecuted and not canceled may be delivered by the court to a law enforcement officer for execution. At the request of the Attorney General or authorized designee, any unexecuted order for custody shall be returned and canceled by the court.

### **Rule 55. Notice of Taking Into Custody and Notice of Hearings**

**(a) Time of notice.** As soon as possible after a child is taken into custody in an abuse or neglect proceeding pursuant to these Rules, the law enforcement officer or Department of Human Services shall diligently use all reasonable and appropriate efforts to notify the parent, guardian or custodian named in the complaint, orally and in writing, that the child has been taken into custody. Notice shall also be given when any hearing is scheduled before the court in regards to custody, abuse or neglect of a child. Such notice shall be given without any unnecessary delay, and in any event within 48 hours.

**(b) Content of Notice.** The notice shall be in writing, and shall include:

- (1)** the name of the child;
- (2)** the reasons the child was taken into custody;
- (3)** the location of the child unless disclosure of this information would endanger the child;
- (4)** the name, telephone number, and address of the responsible agency worker and a statement that the worker will provide further information on request;
- (5)** the time and place of any scheduled hearing;
- (6)** a statement that counsel will be appointed for the parent if he or she cannot afford counsel; and
- (7)** a statement of the issues to be addressed at the hearing and of the parent's right to be present.

**(b) Delivery of Notice; Explanation.** The person delivering notice issued under this Rule shall orally summarize and explain the content of the notice. When adult residents are not present, notice shall be left at the home from which the child is removed and, when possible, at the home of the child's parents or custodians.

**(c) Language of notice.** When the parent or custodian of a child does not understand English, diligent efforts shall be made to provide both written and oral notice in the parent's or custodian's native language.

**(d) Additional Persons to Receive Notice of Hearings.** In addition to notice to be provided under subpart (a) of this Rule to the parent, guardian or custodian named in the petition, upon notification to the court by the parties or others, the following individuals and their attorneys shall be provided notice of and an opportunity to be heard in a neglect or termination proceeding:

- (1) The child's current foster parent;
- (2) The child's current preadoptive parent;
- (3) The child's therapist;
- (4) A relative or other individual with whom the child is currently placed; and
- (5) The child's grandparents.

#### **Rule 56. Appointment of Counsel for the Child; Role of Counsel**

**(a) Appointment.** In every case of child abuse or neglect the court shall appoint as a guardian ad litem for the child counsel who is willing to serve in this role, and competent by training or experience in representing the interests of a child in such proceedings.

**(b) Access to Records.** As provided in the statute, the guardian ad litem shall be given access to all reports relevant to the case and to any reports of examination of the child's parents, guardian or custodian.

**(c) Role of the Guardian Ad Litem.** The guardian ad litem shall be charged with representing the child's rights, welfare, interest and well-being and to advocate the child's viewpoint, and to these ends shall make such further investigation as he deems necessary. In addition, guardian ad litem may interview witnesses, examine and cross-examine witnesses, introduce evidence, make recommendations to the court and participate in the proceedings to the degree appropriate for adequately representing the child.

#### **Rule 57. Commencement of Abuse or Neglect Proceedings; Petition**

**(a) Instituting Proceedings.** Except as provided pursuant to § 2544 and Rules 52 and 54, abuse and neglect proceedings shall be instituted with the filing of a written petition or complaint filed by the Department of Justice giving with particularity all factual and other allegations relied upon to show that a child is abused or neglected. Two or more children may be subject of the same petition or complaint.

**(b) Time for Filing Petition or Complaint.** A petition shall be filed by the time of the shelter care hearing or within any additional time, not to exceed five days excluding weekends and holidays, permitted by the court. In cases in which there is no shelter care hearing, the petition shall be filed within seven days not counting weekends and holidays, after the referral of the complaint to the court.

**(c) Contents of Petition or Complaint.** The petition or complaint shall contain a plain and concise statement of the facts that would give the Family Division jurisdiction. The petition also shall contain the following information or shall specify that such information is unknown:

- (1) A description of the child, including the name, birth date, and residence address of the child and the current location of the child, unless stating the location would endanger the child or seriously risk disruption of the current placement;
- (2) The names and residence addresses of the child's parents and the child's legal guardian or other custodian;

- (3) The specific allegations of neglect or abuse by the parents or other persons responsible for the child's care;
- (4) Whether the child is hospitalized or has been placed in custody, and, if so, the type of placement or hospitalization and the date the child was placed there;
- (5) Whether the child or other members of the child's family have been or are the subject of Family Division proceedings; and
- (6) The date of removal of the child.
- (7) The gender of the child.

**(c) Verification.** The petition or complaint shall be signed by the petitioner, stating under oath the petitioner's good faith. No objection to the petition on the grounds that it was not signed or verified, as herein provided, shall be entertained after a plea to the merits.

**(d) Amendment of Petition.** A petition may be amended prior to the conclusion of the fact-finding hearing. The court officer shall grant the United States Virgin Islands, the child, and the child's parent(s), guardian or custodian(s) notice of the amendment and, where necessary, additional time to prepare.

**(e) Bill of particulars.** A motion for a bill of particulars may be made before the initial appearance or shelter care hearing, within seven days after the initial appearance or shelter care hearing, or at such later time as the court may permit. If the court finds that a bill of particulars is necessary to inform the moving party of the precise nature of the allegations of neglect, the court may order the Attorney General to file a bill of particulars within seven days of the court's order or within such longer or shorter time as justice may require. A copy of the bill of particulars shall be served on all parties. A bill of particulars shall be amended as changes in circumstances require.

**(f) Voluntary Dismissal.** At any time before entry of an order of adjudication, the complaint or petition may be voluntarily dismissed by the party that filed it, subject to approval of the court, by serving a notice of dismissal on all parties, or, if during a hearing, by so stating on the record. Unless otherwise stated, the dismissal shall be without prejudice.

#### **Rule 58. Adjudicatory Hearing in Abuse and Neglect Matters Under 5 V.I.C. § 2548**

**(a) Time for Adjudicatory Hearing.** Adjudicatory hearings shall be heard within 90 days after the filing of a petition or complaint unless:

- (1) good cause is shown; or
- (2) there is consent by all of the parties; or
- (3) the parties have entered into a continuance in contemplation of dismissal.

**(b) Nature of Proceedings; Recordation.** All hearings as provided under § 2548 shall be heard by the court without a jury. All hearings and proceedings shall be recorded either by stenographic notes, or by electric, mechanical, or other appropriate means.

**(c) Conduct of Proceedings.** The court shall proceed to hear evidence on the complaint or petition. The court shall record its findings. If the court finds the allegations in the complaint or petition have not been established, it shall dismiss the complaint or petition and order the child discharged from any shelter care or emergency temporary care heretofore ordered in the proceeding.

**(d) Clear and Convincing Evidence Standard.** Any finding of child neglect or abuse shall be based upon clear and convincing evidence which is relevant and material to the extent of its probative value.

**(e) Examination of Witnesses.** Any party shall have the right to examine and cross-examine the witnesses.

**(f) Presence of Parties.** All parties have the right to be present at all adjudicatory hearings. No party shall be excluded from the hearing unless so ordered by the court for disruptive behavior.

**(g) Joint and Separate Hearings.** When two or more children are alleged to be children in need of services, the hearing may be held simultaneously when the several children involved are related to each other or involved in the same case, unless the court orders separate hearings.

**(h) Motion for Judgment of Dismissal.** In all proceedings if at the close of the evidence for the petitioner the court is of the opinion that the evidence is insufficient as a matter of law to warrant a finding of child(ren) in need of services, it may, and on the motion of any party shall, enter an order dismissing the petition for insufficiency of evidence.

**(i) Scheduling of Dispositional Hearing.**

(1) ***Immediate Proceedings on Consent.*** With the consent of all parties concerned the court shall conduct a dispositional hearing immediately following a finding of child abuse or neglect.

(2) ***Continuance of Adjudicatory Hearing.*** Absent consent of all parties, the court shall continue the hearing under this section for a reasonable period, not to exceed 30 days, except for good cause shown, to receive reports and other evidence bearing on the disposition of the complaint or petition. In this event the court shall make an appropriate order for shelter care subject to the supervision of the court during the period of the continuance.

**(f) Exclusion from Hearings.** Except in hearings to declare a person in contempt of court, as provided by the Virgin Islands Code the general public shall be excluded from all abuse or neglect hearings upon the motion by the respondent or the child. Upon the granting of the motion, only the parties, their counsel, witnesses, and persons requested by a party shall be admitted. Such other persons as the court finds to have proper interest in the case or in the work of the court may be admitted by the court, on condition that such persons refrain from divulging any information which would identify the child or family involved.

**Rule 59. Filing of Disposition Reports in Abuse and Neglect Cases; Review of Reports**

**(a) Time for filing.** At least five days prior to a scheduled disposition hearing, the agency with case responsibility shall file in the official court record in the Family Division Clerk's Office a report in accordance with Rule 60. At the time the report is filed with the court, the agency with case responsibility shall mail, fax, email, or deliver copies to all attorneys of record and shall deliver a copy to the chambers of the responsible court.

**(b) Guardian ad litem and other attorney reports.** At disposition the child's guardian ad litem or counsel for the child may submit a written report setting forth the factual results of the guardian's or counsel's independent investigation and conclusions as to what action should be taken in the child's best interests. Other counsel may submit reports as they deem necessary. These reports shall be filed in the Family Division Clerk's Office and placed in the official court record of the case at least five days prior to the hearing. At the time the report is filed with the

court, the report writer shall mail, fax, email or deliver copies to all attorneys of record and shall deliver a copy to the chambers of the responsible court.

**(c) Advance submission of reports from professionals.** Any written reports that any agency other than that with case responsibility or any other party may wish to be considered must be filed in the Family Division Clerk's Office and placed in the official court record of the case and mailed, faxed, emailed or delivered to all parties at least five days prior to the disposition hearing. Such reports shall include the name, address and telephone number of the author/preparer.

**(d) Findings and conclusions.** The court who conducts the fact-finding hearing shall not consider any reports submitted in accordance with subsections (a), (b) and (c) until after making findings of fact and conclusions of law at the conclusion of the fact-finding hearing.

### **Rule 60. Contents of Agency Report for Disposition in Abuse and Neglect Cases.**

The Department of Human Services shall prepare a disposition report that must include but need not be limited to the following:

**(a)** A statement of the harms to be alleviated, together with a statement of the changes that are needed to correct those problems, a detailed plan to correct the problems, and the timetables for accomplishing the corrections;

**(b)** Specific services and service providers, as well as a description of services that would assist the family in remedying the identified problems, together with an explanation of the availability of suggested services and of alternative services that were considered and rejected;

**(c)** A description of actions that should be taken by the parent, guardian or custodian to correct the identified problems;

**(d)** The case plan or proposed case plan, including case goals, tasks, and timetables for parents (if applicable) and agencies' responsibilities. The case plan shall be attached to the report and may substitute for the items in subparagraphs (b) and (c) above to the extent they are addressed in the case plan;

**(e)** If the child has been in shelter care or third-party custody during the proceedings or the agency's recommendation includes placement of the child away from home, an affidavit regarding reasonable efforts to prevent removal or to reunify the family. Unless a finding has been made earlier that efforts to prevent removal or to reunify the family are not required, this affidavit shall:

(1) Provide a description of the efforts, if any, made by the agency to prevent the need for placement;

(2) Provide a description of the efforts since placement to reunify the family, including services that have been offered or provided;

(3) When the agency's recommendation includes placement of the child away from home, provide an explanation why the child cannot be protected from the identified problems in the home even with the provision of services; and

(4) State whether the agency recommends that no reasonable efforts to reunify the family be made because the conditions have been met or because, despite the lack of a conviction, a reasonable person would conclude the effort would be futile.

**(f)** The agency's recommendation of a permanency plan for the child, including a concurrent

permanency plan if the primary plan is for reunification;

(g) A recommended time for achieving the permanency goal or determining that the goal will not be met;

(h) If return home is recommended, proposed conditions to be met by the parent(s), the agency and other parties and criminal background information on the parent or parents obtained;

(i) If out-of-home placement is recommended:

(1) An explanation why the child cannot be protected from the identified problems in the home even with the provision of services;

(2) Identification of relatives or friends who have been contacted about providing a placement for the child;

(3) A description of the recommended placement or type of placement, including its distance from the child's home and whether or not it is the least restrictive (most family-like) placement available;

(4) The location of any siblings and, if siblings are separated, a statement of the reasons for the separation and the steps required to unite them as quickly as possible and to maintain regular contact during the separation, unless inappropriate;

(5) The terms of visitation, including visitation with siblings and other relatives, including the basis for any recommendation that visitation should be supervised, suspended or prohibited;

(6) A statement of the child's special needs and how they will be met while in placement;

(7) The ability of the parents to contribute financially to the placement and recommendations regarding child support; and

(8) The current contact information, including e mail addresses if available and the telephone numbers of the parties and other relatives, or a statement why such information is not provided.

(j) Recommendations for stay-away orders or no-contact orders required to protect the child, custodian or parent(s);

(k) The recommended criteria for a future determination that continued jurisdiction of the court is no longer necessary.

## **Rule 61. Stipulated Disposition in Abuse and Neglect Cases**

(a) **Generally.** A stipulated disposition may be used to determine the disposition of the case following a fact-finding hearing or a stipulation in lieu of fact-finding provided the requirements of Rule 55 regarding notice and Rule 59 regarding the filing of reports have been met. Written stipulations shall be signed by all counsel including the guardian ad litem or counsel for the child; by the parent, guardian or custodian who is party to the agreement; and by the representative of the agency providing supervision and services.

(b) **Contents.** The parties shall address at least the following issues in any proposed stipulated disposition:

(1) The legal custody and placement of the child;

(2) The changes that are needed to end the court's involvement;

(3) Services to be provided to the child and family and the time period for providing the

services; and

(4) If a child is to be placed away from home:

(A) The type of placement, supporting factual basis, and the time period for the placement;

(B) Terms of visitation with parents, siblings and other relatives and other parental involvement, including information about the child to be provided to the parents; and

(C) Any aspect of the case plan that the parties agree should be included in the court's order.

(5) If a child has been in shelter care or third-party custody during the proceedings or the agency's recommendation includes placement of the child away from home, the proposed stipulated disposition shall also address reasonable efforts to prevent removal or reunify the family. Unless a finding has been made earlier that efforts to prevent removal or to reunify the family are not required, the proposed stipulated disposition shall:

(A) Provide a description of the efforts, if any, made by the agency to prevent the need for placement;

(B) Provide a description of the efforts since placement to reunify the family, including services that have been offered or provided;

(C) When the agency's recommendation includes placement of the child away from home, include an explanation why the child cannot be protected from the identified problems in the home even with the provision of services; and

(D) State whether the agency recommends that no reasonable efforts to reunify the family be made because the conditions necessary have been met.

**(c) Ensuring Consent to Stipulation is Voluntary and Intelligent.** Before accepting a stipulation of disposition, the court shall determine that the parties understand the contents of the stipulation and its consequences and that they voluntarily consent to its terms. Written copies of the stipulation shall be provided to the parties and their counsel.

**(d) Reasonable Efforts and Contrary to Welfare Determination.** Findings shall be made regarding reasonable efforts, whether continuation in the home is contrary to the welfare of the child and the date of removal of the child from the home.

## **Rule 62. Disposition Hearing in Abuse or Neglect Cases under 5 V.I.C. § 2549**

**(a) Conduct of Dispositional Hearing.** In disposition hearings all relevant evidence, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value. The parties shall be afforded a reasonable opportunity to examine reports prepared by the Department of Human Services prior to the dispositional hearing and to controvert oral or written reports received and to cross-examine individuals making reports.

**(b) Orders of Disposition.** As provided by statute, if a child is found to be abused or neglected, the court may make any of the following orders of disposition:

(1) permit the child to remain with his parents, guardian or other person responsible for the child's care, subject to any conditions the court may prescribe;

(2) place the child under protective supervision as provided in 5 V.I.C. § 2551;

(3) make the child the subject of an order of protection as provided in 5 V.I.C. § 2552; or

(4) transfer legal custody to any of the following:

(A) a relative or other individual who, after study of the Department of Human Services is found by the court to be qualified and willing to receive and care for the child; or

(B) a public or private agency responsible for the care of abused or neglected children.

**(c) Commitment or Confinement of Child.** As provided in § 2549(c), unless a child found to be abused or neglected shall also be found to be delinquent, the child shall not be committed to, or confined in, a facility for delinquent children.

**(d) Coordination and Provision of Services.** The court may order the Department of Human Services to coordinate the provision of services by other agencies, or to provide services to fulfill the purposes of this chapter.

### **Rule 63. Findings and Order of Disposition in Abuse and Neglect Cases**

**(a) Timing.** The court shall enter findings and an order of disposition within five days following the disposition hearing.

**(b) Use of Stipulations.** The findings and order may be based on the stipulated disposition pursuant to Rule 61 or a stipulated disposition may be incorporated by reference.

**(c) Contents.** The findings and order shall address the following issues, where required by law or otherwise appropriate:

(1) The specific harms to be alleviated, including a statement of all needed changes that are needed to correct those problems, with and timetables for accomplishing these changes;

(2) Whether the agency's plan, as described in its report pursuant to Rule 60, is accepted, modified or rejected. Any modifications, if any, shall be specified. The order shall require the agency responsible for provision of services to promptly report to the Family Division and all parties any if it is unable for any reasons for inability to provide the services delineated in the plan or the basis for any proposed changes to the plan necessitated by recent if events occur that would require a change in the plan;

(3) Specific actions to be taken by the parent(s) to correct the identified problems;

(4) The child's legal status and placement of the child, including, the least restrictive type of placement proposed for the child and the distance from the child's home for any proposed out-of-home placement is ordered, either the specific placement or the type of placement for the child, including and whether it is the least restrictive (most family-like) placement available;

(5) The permanency plan for the child, including a concurrent permanency plan if the primary plan is for reunification;

(6) The time frame for achieving the permanency goal or determination that the goal will not be met;

(7) If return home is ordered, the conditions that the parents, the agency and other parties must meet to ensure the child's safety and well-being;

(8) If out-of-home placement is ordered, a detailed finding of the reasonable efforts that were made to prevent or eliminate the need for removal or, in the alternative, that the child's removal from the home is necessary despite services that will be provided to the child or the

child's family;

(9) A description of the agency's efforts, if any, to prevent the need for placement;

(10) A description of the agency's efforts since placement to reunify the family, including services that have been offered or provided;

(11) An explanation as to why the child cannot be protected from the identified problems in the home even with the provision of the specified services;

(12) A finding, if appropriate, that no efforts to reunify the family are required under 5 V.I.C. § 2554.

(13) A finding whether continuation of the child in the home would be contrary to the welfare of the child;

(14) A finding, if appropriate, as to the date of removal of the child from the home;

(15) A finding of the agency's effort to contact relatives or friends about providing a placement for the child, the steps taken to involve extended family members when appropriate, to plan for a safe and permanent home for the child, and any further efforts that are required;

(16) The location of any siblings, and, if siblings are separated, an order specifying steps to unite them as quickly as possible and to maintain regular contact during the separation, unless inappropriate;

(17) Visitation arrangements for the child, including visitation with siblings and other relatives, unless such visits would not be in the child's best interests. Any conditions placed on visits shall be specified. Findings as to the reasons that visitation is deemed inappropriate; and

(18) The child's special needs and orders with respect to how these needs shall be met while the child is in placement.

**(d) Other Appropriate Order Provisions.** If appropriate, an order may be entered:

(1) directing the payment of child support by parents if they are financially able to do so;

(2) including restraining provisions, stay away or protective order provisions, civil protection orders, and other injunctive relief needed to protect the child;

(3) the criteria for a future determination that continued jurisdiction of the court will no longer be necessary; and

(4) the date and time of the next hearing.

#### **Rule 64. Order for Taking Custody of Child Who has Left Court-Ordered Placement.**

**(a) Issuance of Order to Take Child Into Custody.** During the pendency of a case, upon application of a law enforcement officer, social worker, parent, guardian, or custodian or the Attorney General or authorized designee, the court may issue an order for taking a child into custody where there are reasonable grounds to believe that the child has fled from the legal custody of the person or agency with whom he or she has been placed by the court.

**(b) Application.** A law enforcement officer or social worker shall submit an application to the court through the office of the Attorney General, for an order for custody. The application shall be supported by testimony or a concise affidavit or affirmation by the social worker assigned to the case or his or her supervisor which contains the specific circumstances surrounding the child's leaving the custody of the person or agency with whom he or she has been placed, and the actions the assigned social worker wishes to be taken once the child is taken

into custody. The application shall be in writing and shall include:

- (1) The name and title of the applicant with office address and telephone number;
- (2) A sworn statement of the grounds for taking the child into custody; and
- (3) The circumstances surrounding the child's custody and the child's leaving the legal custody of the person or agency with whom he or she has been placed by the court.

**(c) Form.** The order for custody shall be signed by a court. It shall be issued under the title of the Superior Court of the United States Virgin Islands, Family Division, and shall contain the name of the court to whom the case is assigned, if known; the date of the issuance of the custody order; the name of the child; any description by which the child can be identified with reasonable certainty; the child's age and address; and the location at which the child last resided. Where it is likely that the child has returned to a parent, the parent's address shall also be included. The order shall command that the child be taken into custody and shall state that the child should be brought before a representative of the child and the Department of Human Services for a determination of placement pending appearance in court.

**(d) Notice to parents or Custodians.** Notice of any custody order issued pursuant to this Rule shall be given to the parents or other legal custodians of the child without any unnecessary delay, and in any event within 48 hours after the order is issued by the court. The officer, agency, or social worker or doctor shall diligently use all reasonable and appropriate efforts to notify the parent, guardian or custodian, orally and in writing, that an order for custody of the child has been issued.

**(e) Execution and return.**

**(1) By whom.** An order for custody shall be executed by a law enforcement officer or Department of Human Services social worker.

**(2) Territorial limits; time limitation.** An order for custody may be executed at any place in the United States Virgin Islands but not more than one year after the date of issuance or reissuance unless extended by the judge.

**(3) Manner of Execution; Notice to parents or Custodians.** The order for custody shall be executed by taking into custody the child named therein. The officer or social worker need not have the order in his or her possession at the time of the taking into custody, but upon request the officer or social worker shall show the order to the child where age appropriate and to the parent, guardian, or custodian if available, within 24 hours.

**(4) Return.** On or before the return day, the person to whom an order for custody was delivered for execution shall make a return thereof to the court. At the request of the Attorney General or that official's designee, an order for custody returned unexecuted and not canceled may be delivered by the court to a law enforcement officer for execution.

## **Rule 65. Revocation or Modification of Conditional Release Terms**

**(a)** The Attorney General or the guardian ad litem/counsel for the child may file a motion to revoke conditional release or a motion to modify the terms of conditional release in any case in which a child is the subject of a petition pending within the family court, the child has been conditionally released to his or her parents following a shelter care hearing or initial appearance, and one of the following occurs:

- (1)** The child or a sibling is subsequently taken into custody;

(2) New evidence is presented that the child is neglected and that revocation or modification of the terms of conditional release is necessary to protect the child pending the fact-finding hearing; or

(3) The parent, guardian, or custodian has violated the terms of conditional release and as a result it appears that revocation or modification of the terms of conditional release is necessary to protect the child pending the fact-finding hearing.

(b) In the event of a motion based upon factors (1), (2), or (3), above, the Attorney General or counsel for the child also may file a motion for leave to amend the petition.

(c) If the conditional release is revoked, the court may place the child in shelter care pursuant to Part E of these Family Rules and Procedures, or modify the conditions of release pursuant to provisions of this rule.

(d) The standard of proof on a motion pursuant to subsection (a) of this rule shall be probable cause to believe that the facts alleged in the motion or amended petition are true.

### **Rule 66. Review of Disposition and Placement**

(a) **Notice and hearing.** A review hearing shall be held to review case progress at least once every six months following disposition for as long as the child remains in an out-of-home placement unless the child has received a permanency hearing within the past six months. At least 15 days prior to the review hearing, the clerk shall file and serve copies of the notice of hearing to all parties, counsel or the child, guardian ad litem and attorneys of record stating the time and place of the hearing.

(b) **Review reports.** At least 10 days prior to a scheduled review hearing, the agency with case responsibility shall file and serve a report in accordance with Rule 67 upon all parties, all attorneys of record, counsel for the child, and guardian ad litem.

(c) **Guardian ad litem and other attorney reports.** The child's guardian ad litem or counsel for the child may submit a written report setting forth the factual results of the guardian's or counsel's independent investigation and conclusions as to what action should be taken in the child's best interests. These reports shall be filed and served at least five days prior to the hearing.

(d) **Advance submission of reports from professionals.** Any written reports that any agency other than that with case responsibility or any other party may wish to have admitted into evidence without calling the author/preparer of the report as a witness must be filed and served on all parties, attorneys of record, counsel or the child and guardian ad litem at least five days prior to the review hearing. Information on the name, address and telephone number of the author/preparer of a report to be submitted into evidence must be provided so that he or she may be subpoenaed and cross-examined if a party or attorney wishes to do so.

### **Rule 67. Contents of Agency Report for Review Hearing**

The review report shall include the following information:

(a) Recommendations for the current custody and placement of the child;

(b) Factual information and evaluation regarding:

(1) The current addresses and telephone numbers of the parties or a statement of why such information is not provided;

(2) The agency's efforts to locate parents who have not received actual notice of the litigation or are not currently communicating with the agency, and provide them with notice of the proceedings, and involve them in the planning for the child;

(3) Progress in ameliorating the condition(s) that resulted in the finding of neglect and placement of the child, and, if returning the child home continues to be the case objective, the actions that should be taken by the parents to permit the return of the child;

(4) Evidence of new problems that would adversely affect the child;

(5) The records of visitation, including identification of the visitor, dates and duration of visits, and any reasons why visitation has not occurred or has been less frequent than ordered;

(6) The identity, status and placement of any siblings, and if any siblings are separated, a statement of the reasons for the separation and the steps that have been and will be taken to unite them as quickly as possible and a detailed plan to maintain regular contact during separation;

(7) The record of compliance by parents and agency with the case plan and previous orders and recommendations of the court, including:

(A) The level/extent of participation of the parties in developing the plan;

(B) The cooperation of the parent, guardian, or custodian with the applicable department, agency, or institution;

(C) The contacts between the social worker(s) responsible for services and the parent, guardian or custodian, and the child;

(D) The services and assistance that have been provided to the family, the services and assistance that were specified in the plan but not provided, and services to the family that will be needed. For those services that were not provided, an explanation of why such services were not provided; and

(E) The implementation of the case plan during the review period, and the progress made towards meeting both the short-term and long-term goals of the plan, including the source of all information provided.

(8) A description of the environment in which the child is placed and an assessment of whether that environment is the most family-like and appropriate setting for the child, in light of the child's age, gender, physical, emotional and educational needs, and whether the child is in close proximity to the parents' home or homes;

(9) Whether services to meet the child's special needs -- physical, emotional, spiritual and educational -- have been provided to the child while in placement and what additional services are necessary to meet those needs;

(10) Whether there is a continued need for out-of-home placement;

(11) The anticipated date by which the child may be returned to the home or placed for adoption, guardianship, or custody;

(12) Whether the agency has requested or intends to request the filing of a motion to terminate the parent and child relationship and, if not, its reasons for determining that such a motion is not appropriate;

(13) If return home is recommended, an explanation of why the child will be safe at home and of any proposed conditions to be required of the agency, parents, and other parties;

(14) If applicable, recommended revisions in the terms of visitation and child support orders and the reasons for the recommendations;

(15) If removal or continued out-of-home placement is recommended, a recommendation concerning whether and for how long services should be continued to reunify the family and the estimated time within which the child can be returned home or whether it is in the interest of the child to identify an alternative permanent placement plan for the child should be adopted;

(16) If out-of-home placement with a goal of reunification is recommended, an assessment of whether it is appropriate and advisable to place the child with a foster family willing to provide a permanent home for the child in case reunification is unsuccessful. If such a placement is appropriate, the agency must indicate what steps are needed to secure and stabilize such a placement;

(17) Current recommendations, if appropriate, for restraining orders, orders to stay away from the child or residence, domestic violence orders of protection, or other injunctive relief;

(18) Any recommended revision of the case plan, such as revised permanency or service goals, additional services to be provided, revised visitation arrangements, or revised time schedules; and

(19) Any recommended modifications to existing court orders.

(c) The report author shall make every reasonable effort to attach to the review report copies of all available written reports on which the writer is relying for the writer's recommendations.

### **Rule 68. Procedures and Orders at Review Hearings and Permanency Hearings**

(a) The author(s) of the review report(s) shall appear at the review hearing unless excused by the court.

(b) The court shall inform any parent who appears at the hearing of the maximum time allowed to make improvements or risk losing all rights to custody of the child.

(c) The court shall set the time and date of the next hearing and specify the type of hearing to be held.

(d) The court shall enter an appropriate order following the hearing. The order shall be consistent with 5 V.I.C. § 2554.

### **Rule 69. Permanency Hearing**

(a) **Notice and hearing.** A permanency hearing shall be held to determine the permanency plan for the child within 12 months after the child's out-of-home placement, or within 30 days of a judicial determination that reasonable efforts to reunify the child and family are not required pursuant to 5 V.I.C. § 2554. Subsequent permanency hearings shall be held at least every six months thereafter, for as long as the child remains in an out-of-home placement. At least 30 days prior to the hearing, the clerk shall file and serve written notice of the permanency hearing to all parties, the guardian ad litem, counsel for the child, the agency and attorneys of record.

**(b) Reasonable Efforts Determination.** At the first permanency hearing and at a permanency hearing at least once every 12 months thereafter, there shall be a determination of whether reasonable efforts have been made to reunite the family or to carry out the current permanency plan established for the child.

**(c) Permanency reports.** At least 10 days prior to a scheduled permanency hearing, the agency with case responsibility shall file and serve on all parties, the guardian ad litem, counsel for the child, the agency a report in accordance with Rule 70 of these Family Rules and Procedures.

**(d) Guardian ad litem and other attorney reports.** The child's guardian ad litem or counsel for the child may submit a written report setting forth the factual results of the guardian's or counsel's independent investigation and conclusions as to what action should be taken in the child's best interests. Other counsel may submit reports as they deem necessary. These reports shall be filed and served on all parties, counsel for the child, the Attorneys of Record, and the agency at least five days prior to the hearing.

**(e) Advance submission of reports from professionals.** Any written reports submitted for consideration other than from any agency with case responsibility must be filed and served on all parties, the guardian ad litem, counsel for the child, the agency and attorneys of record at least five days prior to the permanency hearing. Such reports shall include the name, address, and telephone number of the author.

#### **Rule 70. Contents of Agency Report for Permanency Hearing**

The report for the permanency hearing shall accomplish the following:

- (a)** Address those matters specified in Rule 67
- (b)** Make a recommendation as to the permanency plan for the child;
- (c)** When the report recommends that a child be returned home on a date certain, set forth:
  - (1) Facts and circumstances showing that the agency has complied with the case plan;
  - (2) All corrections made to the conditions or circumstances leading to the removal of the child;
  - (3) The frequency of recent visitation and its impact on the child; and
  - (4) A detailed plan for the child's safe return home and follow-up supervision after family reunification;
- (d)** When an extension of out-of-home placement for a time certain is proposed with a goal of reunification, set forth:
  - (1) Facts and circumstances indicating the nature and quality of the relationship between the parents and child, the progress that the parents or guardian have made toward accomplishing the child's return home, and whether return home is likely within the next six months; and
  - (2) A detailed plan to achieve reunification within six months;
- (e)** When the report recommends termination of parental rights, set forth:
  - (1) Facts and circumstances supporting the grounds for termination; and
  - (2) A detailed plan to place the child for adoption;

**(f)** When an award of guardianship or legal custody to an individual or couple is recommended, set forth:

(1) Facts and circumstances establishing a compelling reason why termination of parental rights is unwarranted, including the fitness of the parents, or demonstrating that although the child cannot be placed with the parents, termination is not in the best interest of the child; and

(2) Facts and circumstances demonstrating the appropriateness of the individual or couple to serve as permanent caretaker of the child; and

(3) A detailed plan to ensure the stability and success of the placement;

**(g)** When placement in an alternative planned permanent living arrangement is recommended, including placement with a kinship caregiver, another relative placement or other family setting, set forth:

(1) Facts and circumstances establishing a compelling reason why termination of parental rights is unwarranted, including the fitness of the parents, or demonstrating that although the child cannot be placed with parents, termination is not in the best interest of the child;

(2) Facts and circumstances providing compelling reasons why an award of guardianship or legal custody is not in the best interests of the child;

(3) Facts and circumstances demonstrating the appropriateness of the individual or couple and their commitment to continued care of the child; and

(4) A plan to ensure the stability and success of the placement;

**(h)** When placement in an institutional setting, including a group home, is recommended because the child cannot function in a family setting, set forth:

(1) Facts and circumstances supporting that recommendation; and

(2) A detailed plan to prepare the child to live in a family setting at the earliest possible time and for to accomplish visitation with parents and siblings in the interim.

**(i)** When long term out-of-home placement in connection with independent living arrangements is recommended, set forth:

(1) Facts and circumstances establishing a compelling reason why termination of parental rights is unwarranted, including the fitness of the parents, or demonstrating that although the child cannot be placed with parents, termination is not in the best interest of the child;

(2) Facts and circumstances explaining why continued custody or out-of-home placement is not appropriate while independent living services are being provided; and

(3) A plan to prepare the child for independent living and recommendations regarding visitation between the child and his or her parents and siblings.

**(j)** Address the reasonable efforts that have been made to

(1) reunify the family (unless there has been a determination that reunification efforts are not required or in the child's best interests) or

(2) carry out the permanency plan established for the child and determine whether the agency has provided the services specified in the case plan that are necessary to permit the child's safe return home or to accomplish the permanency plan.

## **Rule 71. Findings and Orders at Permanency Hearing**

The court shall promptly make findings and enter an order following the permanency hearing. The findings and order shall include, but are not limited to the following:

**(a) Permanency plan.** The court shall determine whether the permanency goal is reunification, adoption, guardianship, custody, or an alternate out-of-home placement, and shall identify the steps to be taken to achieve the goal and to ensure the safety and stability of the permanent placement, including the services to be provided to the child, parents or caretakers. The court shall set forth any compelling reason(s) that favor an alternate out-of-home placement,

**(b) Timetable.** Once a permanency goal is determined, the court shall set forth the date for the achievement of that goal.

**(c) Reasonable efforts.** At the first permanency hearing, the court shall make a finding of whether reasonable efforts have been made to reunify the child with the parent(s) from whose home the child was removed, unless there has been a determination that reasonable efforts are not required or in the child's best interest. At each subsequent permanency hearing the court shall make a finding of whether reasonable efforts have been made to carry out the permanency goal established for the child.

**(d) Termination of parental rights status.** If the child has been in out-of-home placement for 15 of the most recent 22 months, the court shall make a written finding whether there is a compelling reason(s) for termination of parental rights in the child's best interest.

**(e) Return home not possible – guardianship or legal custody.** If it is not appropriate that the child either return home or be adopted, the court shall determine whether the child should be placed pursuant to an award of guardianship or legal custody. If the court determines that the child should be placed pursuant to an award of guardianship or legal custody, its order shall include:

- (1) The rights and responsibilities that should remain with the parents;
- (2) Reasons why the alternative placement is in the best interest of the child; and
- (3) Steps that the parties, guardian ad litem, counsel for the child and attorneys of record must take to continue legal proceedings.

**(f) Alternative planned permanent living arrangements.** The court shall determine whether the child should be placed in an alternative planned permanent living arrangement, including placement with a kinship caregiver, in another relative placement or in an independent living program.

- (1) The court's findings shall specify the compelling reason(s) why reunification, adoption, legal custody, and guardianship were not practical, appropriate, or in the child's best interests;
- (2) If the court determines that the child should remain or be placed in an institution or group home, the court's findings shall include a statement of:
  - (A) Reasons why continued treatment outside a family environment is necessary or preferable, including why parents or specially trained foster parents or relatives cannot care for the child;
  - (B) Reasons why a less restrictive group home or institutional placement are not possible or appropriate; and

(C) The steps to be taken by the agency to prepare the child to be placed with a family or in an institution.

(3) If the court determines that the child should be emancipated or placed in an independent living program, the court's findings shall include a statement of:

(A) Reasons why foster family care is no longer appropriate or in the child's best interest; and

(B) What services, supervision, and support the agency will arrange or provide for the child

**(g) Additional matters.** The order shall also specify the following matters, as appropriate, and if not previously addressed:

(1) The legal status and placement of the child;

(2) If the child is returned home without dismissing the case, any conditions that will be required of the agency, parents and other parties;

(3) If the child will be removed from home or remain in out-of-home, placement, whether reunification services will continue to be provided to the family, what those services will be, and the time frame for continuation of services;

(4) Actions to be taken by the parents to correct the identified problems;

(5) If the child will be placed or remain in out-of-home placement with a goal of reunification, whether the agency will place the child with a foster family willing to provide a permanent home for the child in the event that reunification is unsuccessful;

(6) Changes in the terms of visitation and other parental involvement, including information about the child to be provided to the parents;

(7) Services to be provided to the child and family;

(8) If the child is separated from siblings, steps to reunite them or maintain regular contact during the separation;

(9) Protective orders controlling the conduct of any Party who is subject to the court's jurisdiction;

(10) Conditions regarding the child's placement, including the type, location and degree of restrictiveness of the placement;

(11) Steps to meet the child's special needs while in out-of-home placement;

(12) Any aspect of the case plan, including modification of the case plan, that should be included in the court's order; and

(13) Any other matter within the court's dispositional powers.

Rules 72 – 74. Reserved

## Part E – Shelter Care

### Rule 75. Criteria for Shelter Care

**(a) Generally.** When the Attorney General moves the court to place a child in shelter care, the government shall have the burden of showing that shelter care is required.

**(b) Protection of the person of the child.** In determining whether shelter care is necessary the relevant factors for considerations include:

- (1) The child's age and maturity;
- (2) The child's existing living arrangements;
- (3) The duration of existing living arrangements and the child's adjustment to them; and
- (4) Evidence or likelihood of serious harm to the child's physical or mental health resulting from existing living arrangements.
- (5) The nature and seriousness of any alleged abusive or threatening conduct toward the child, and the potential for further harm to the child prior to the fact-finding hearing;
- (6) The existence of illness or injuries to the body of the child who was in the custody of the parent, guardian or custodian for which no satisfactory explanation is given;
- (7) The nature and seriousness of abusive or threatening conduct toward a sibling as it reflects on the possibility of future harm to the child;
- (8) Suicidal actions or tendencies or other seriously self-destructive behavior of the child or any other person creating an imminent danger to the child's life or health; and
- (9) Chronic mental or physical conditions of the parent, guardian or custodian which bear directly on the safety of the child, lack of care or supervision.

**(c) Alternatives to shelter care.** Before a child is placed in shelter care, the court must determine, that:

- (1) No alternative resources or arrangements are available to the family that would adequately safeguard the child without requiring removal; and
- (2) No relative or other third-party custodian is available who can protect the child and provide for his or her welfare.

**(d) Evaluating harm from removal.** In making a shelter care determination, the court shall evaluate the harm to the child that may result from removal. In making such evaluation, the court shall consider such factors as:

- (1) The child's attitude toward removal and ties to the parent, guardian or custodian, as well as the child's relationships with other members of the household;
- (2) The disruption to the child's schooling and social relationships which may result from placement out of the neighborhood; and
- (3) Any measures which can be taken to alleviate such disruption.

## **Rule 76. Shelter Petitions; Hearings; Orders**

**(a) Contents of Shelter Petition.** If a child has been or is to be removed from the home and maintained in an-out of home placement for more than 24 hours, the person requesting placement shall file a written complaint or petition that shall:

- (1) specify the name, address, date of birth, and gender of the child or, if unknown, designate the child by any name or description by which he or she can be identified with reasonable certainty.
- (2) specify the name and address, if known, of the child's parents or legal custodian and how each was notified of the shelter hearing;
- (3) if the child has been removed from the home, state the date and time of the removal;
- (4) specify that the child is of an age subject to the jurisdiction of the court
- (5) state the reasons the child needs to be placed in a shelter;
- (6) list the reasonable efforts, if any, that were made by the Department of Human Services to prevent or eliminate the need for the removal or continued removal of the child from the home or, if no such efforts were made, a description of the emergency that prevented these efforts;
- (7) recommend where the child is to be placed or the agency to be responsible for placement;
- (8) if the children are currently not placed together, specify the reasonable efforts of the Department of Human Services to keep the siblings together after the removal from the home, why a foster home is not available to place the siblings, or why it is not in the best interest of the child that all the siblings be placed together in out-of-home care;
- (9) specify ongoing visitation or interaction between the siblings or if sibling visitation or interaction is not recommended, specify why visitation or interaction would be contrary to the safety or well-being of the child; and
- (10) be signed by the Attorney General.

**(b) Shelter Care Hearing.** When a child alleged to be neglected or abused has not been taken into custody, an initial appearance or shelter care hearing must commence within 72 hours (excluding weekends and holidays) after the child is taken into custody. If the probable cause portion of the hearing is continued, it must be completed within five days or within the time consented to by all parties present.

(1) The petitioner shall make a diligent effort to notify the parent or custodian of the child and shall notify his or her attorney of record of the date, time, and place of the hearing. The petitioner shall list all parties notified of the hearing on the certificate of service on the shelter petition.

(2) The court shall conduct an informal hearing on the petition within the time period provided by law. The court shall determine at the hearing whether the criteria provided by law for placement in a shelter have been met.

(3) At the hearing all interested persons present shall have an opportunity to be heard on the criteria for placement as provided by law.

(4) The court may base its determination on a sworn complaint, testimony, or affidavit and may hear all relevant and material evidence, including oral and written reports, to the extent of its probative value even though it would not be competent at an adjudicatory

hearing.

(5) The court shall advise the parties of:

(A) their right to be represented by counsel as provided by law;

(B) the reason for the child being in custody and why continued placement is requested; and

(C) their right to present placement alternatives.

**(c) Shelter Order.** The order shall be in writing and shall:

(1) state the name, age, and gender of the child and, if the child's age is unknown, that the child is believed to be of an age which makes him or her subject to the jurisdiction of the court;

(2) include findings as provided by law;

(3) designate the place where the child is to be placed or the person or agency that will be responsible for this placement along with any special conditions found to be necessary;

(4) state the date and time where issued;

(5) indicate when the child shall be released from the shelter or set a review of shelter hearing within the time limits provided by law; and

(6) include a certificate of service to all parties and their attorneys of record.

**(d) Release From Shelter Care.** The parent or legal guardian may file a motion to return the child temporarily removed any time prior to an adjudicatory hearing. When such a motion is filed, the court must hold a hearing within three days after the motion is filed. The court shall grant the motion unless it finds that there is probable cause to believe that the child is in imminent danger through abusive or neglectful behavior of the parent.

### **Rule 77. Report for Initial Appearance or Shelter Care Hearing**

**(a) Filing.** The Department of Human Services shall file a written report in open court at the initial appearance or commencement of the shelter care hearing. Copies of the report shall be provided prior to the hearing to counsel for all parties and to any party participating without counsel.

**(b) Contents – Cases Where Child Has Been Removed from the Home.** In cases in which the child has been removed from home or in which removal is proposed, the report shall include each of the following elements:

(1) A brief statement of the specific danger requiring immediate placement of the child prior to trial;

(2) The time, place, and manner in which the child was removed from the danger;

(3) If the child was removed prior to a court order, a brief statement why it was not possible to obtain the order prior to removal;

(4) To the extent known, the names and addresses of custodial and non-custodial parents, other legal guardians or legal custodians of the child, and any other person acting as a parent at the time of removal;

(5) Persons notified and a brief statement of the steps taken to locate those not notified;

(6) A description of the services, if any, offered or provided to the family to prevent placement;

(7) The results of an investigation and assessment of the danger to the child of remaining in the home, using standardized and accepted risk management tools;

(8) Any additional medical screening which will be necessary for the child, together with planned dates for further testing and evaluation (this may be in the form of an attached medical screening form);

(9) If return home pending adjudication is recommended:

(A) Recommended conditions of release to ensure the child's safety, wellbeing and appearance in court;

(B) Services which should be provided to the child or family prior to adjudication;

(10) If foster care or placement with a relative is recommended:

(A) A written statement indicating if reasonable efforts have been made to prevent removal or if no such efforts have been made, why no such efforts have been made;

(B) The reasons why conditions of release together with services to the child and his or her family would not adequately protect the child in the home;

(C) A statement of whether there exist any relatives or third parties who may be appropriate caretakers, and what efforts were made to identify such persons, if none are immediately available;

(D) A brief description of the current and proposed shelter care placement including the type of placement;

(E) A statement of the child's current eligibility for services and the basis for that determination;

(F) A statement of the measures to be taken to minimize the disruption to the child and his or her family and social relationships during the shelter care period;

(G) Immediate measures that might be taken to expedite the reunification of the family;

(H) Alternatives to foster care considered, such as placement with relatives or others with whom the child is familiar; and

(I) Recommended sibling, parent, and other visitation pending adjudication.

In cases in which the child has not been removed from home and the Department of Human Services does not recommend doing so pending the fact-finding hearing, the report need only include elements (4) - (9)) of subpart (b) of this Rule.

**(c) Incomplete report.**

(1) If a report is incomplete because information is solely within the possession of the parent, guardian or custodian, and the parent, guardian or custodian refuses to provide such information, the report shall state that the information was withheld.

(2) If further investigation is necessary for the completion of the report, the agency with case responsibility may request additional time for the purposes of completing the investigation and preparing the recommendation as to the placement of the child pending trial and disposition. Additional placement options identified shall be investigated during this time.

(3) If a required report is missing, the court shall direct that it be filed within 72 hours, not counting weekends and holidays but may make findings necessary to protect the child based on oral representations.

#### **Rule 78. Matters Addressed in Shelter Care Hearings**

(a) **Inspection of reports.** Prior to the shelter care hearing or initial appearance, the parties shall be permitted to inspect any reports or other written information that will be provided to the court at the hearing or initial appearance,

(b) **Inquiry as to notice and paternity status.** At the beginning of the shelter care hearing or initial appearance the court shall determine the individuals and parties entitled to notice and shall determine whether notice of the hearing has been provided to each in compliance with Rule 4 of the Virgin Islands Rules of Civil Procedure and what further efforts must be taken to notify all parties and individuals entitled to notice as rapidly as possible. At this or any subsequent hearing, an inquiry shall also be made as to the identity of the putative father and the status of efforts to establish paternity of the child.

(c) **Absence of a party.** The hearing shall not be postponed because of the absence of the parent, guardian or custodian, but if the child is ordered to be held in shelter care, the parent, guardian or custodian shall be notified by counsel of his or her right to apply for reconsideration of the order.

(d) **Appointment of counsel.** The court shall advise the parties of the right to counsel and shall appoint counsel and a guardian ad litem in accordance with the Virgin Islands Code.

(e) **Permanency Planning Notice.** The court shall provide parents with and explain to them a Permanency Planning Notice that advises them that if their child is removed from home and they are unable to safely assume care of their child within 12 months of an adjudication of neglect or abuse within 14 months of the child's removal from the home, the court must and will promptly consider permanent alternatives to returning the child home, including termination of parental rights.

#### **Rule 79. Conduct of Shelter Care Hearing.**

(a) **Scheduling.** The court shall conduct an informal hearing on the petition within the time limits provided by law. The court shall determine at the hearing the existence of probable cause to believe the child is abused or neglected and whether the other criteria provided by law for placement in a shelter have been met. The shelter hearing may be continued for up to 72 hours with the child remaining in shelter care if either:

(1) the parents or legal custodians appear for the shelter hearing without legal counsel and request a continuance to consult with legal counsel; or

(2) the court determines that additional time is necessary to obtain and review documents pertaining to the family to appropriately determine the risk to the child.

(b) **Notice.** The parents or legal custodians of the child shall be given actual notice of the date, time, and location of the shelter hearing. If the parents are outside the jurisdiction of the court, are not known, cannot be located, or refuse or evade service, they shall be given such notice as best ensures their actual knowledge of the date, time, and location of the shelter hearing. If the parents or legal custodians are not present at the hearing, the person providing, or attempting to provide, notice to the parents or legal custodians shall advise the court in person or

by sworn affidavit of the attempts made to provide notice and the results of those attempts.

**(c) Presentation of report.** The Department of Human Services shall submit to the court orally and in writing the report of the initial investigation prepared pursuant to Rule 77. If removal of the child from the home is recommended, the court shall hear from the parties on the issue of shelter care in accordance with the criteria set forth in Rule 75. with a relative shall also be considered if requested by the agency or a party.

**(d) Probable cause.** If the court determines that removal from the home appears necessary under the criteria set forth in Rule 75 and the parent, guardian or custodian objects to removal, a probable cause hearing shall be held. If the court finds that there is probable cause to believe that the allegations contained in the petition are true, the court shall hear any additional evidence concerning the placement of the child, visitation, and services required for the parents or child. The court may admit any relevant testimony or other evidence concerning the placement of the child, visitation and services, whether or not such evidence would be admissible at the fact-finding hearing, provided that any written reports, social records or other documents made available to the court at the hearing also have been made available to the parties in accordance with Rule 77.

**(e) Reasonable efforts.** The court shall determine whether the responsible agency made reasonable efforts to prevent or eliminate the need for the removal of the child from the home or, alternatively, that the child's removal from the home is necessary regardless of any services that could be provided to the child or the child's family. In determining whether the agency has made reasonable efforts to prevent removal, the court shall consider:

- (1) Dangers to the child and the family and problems precipitating those dangers;
- (2) Whether the agency has selected services specifically relevant to the family's problems and needs;
- (3) Whether caseworkers have diligently arranged those services;
- (4) Whether appropriate services have been available to the family on a timely basis;
- (5) The availability and accessibility of the services provided; and
- (6) The result of the interventions made by the agency.

**(f) Determination that reasonable efforts are not required.** The court shall determine whether reasonable efforts are not required in the future to effectuate reunification, because of the existence of one of the following circumstances:

- (1) A court of competent jurisdiction has determined that the parent:
- (2) Subjected a sibling or another child to cruelty, abandonment, torture, chronic abuse, or sexual abuse; chronic neglect;
- (3) Committed the murder or voluntary manslaughter of a sibling or another child;
- (4) Aided, abetted, attempted, conspired, or solicited to commit the murder or voluntary manslaughter of a sibling or another child; or
- (5) Committed an assault that constitutes a felony against the child who is the subject of a petition before the Family Division, a sibling of such a child, or another child; or
- (6) The parent's parental rights have been terminated involuntarily with respect to a sibling.

**(g) Determination of whether continuation in the home is contrary to the welfare of the child and the date of removal from home.** The court shall determine whether continuation in the child's home would be contrary to the welfare of the child and, where the child is or has been removed from the home, shall determine the date of the child's removal from home.

**(h) Discovery and related matters.** parties may request orders with respect to discovery, investigation, examinations (e.g., drug, physical, mental), release of records (e.g., educational, medical), paternity testing and other matters needed to ensure speedy resolution of the case. The court also may make a determination with respect to requests for special advocates or guardians ad litem for parents or other parties. Orders relating to mediation or case conferencing may be requested at this time.

**(i) Additional matters.** The court shall address the following additional matters:

(1) Inquiry as to Potential Relative Placements. When the child has been removed from home or where removal from home is recommended, the court shall determine the names, nature of the familial relationship, place of residence and status of investigation of relative resources for placement of the child.

(2) Child Support Worksheet. A child support worksheet shall be presented to each parent to complete and submit to the court at the next hearing.

(3) Scheduling. The court shall set the dates for the mediation or pretrial conference.

**(j) Five-day continuance.** For good cause shown, any party may request that the court continue any part of the initial hearing (including the probable cause hearing) other than the shelter care determination for a period not to exceed five days or for such additional time as is consented to by all parties present. If additional time for preparing a more complete report is granted, the report shall be filed in the court jacket and provided to counsel for all parties not later than 24 hours prior to the continued hearing

## **Rule 80. Findings and Order at Initial Shelter Placement Hearing**

**(a) Matters addressed in all cases.** At the close of the initial hearing, the judge shall enter an order in writing which shall include:

**(1) Paternity testing.** Genetic testing to determine paternity where paternity of the child has not been established.

**(2) Discovery and related matters.** Orders with respect to discovery, investigation, examinations (e.g., drug, physical, mental), release of records (e.g., educational, medical), appointment of special advocates or guardians ad litem, and other matters needed to ensure speedy resolution of the case.

**(3) Calendar for further proceedings.** Orders specifying dates and times for mediation, the pre-trial conference and the fact-finding hearing.

**(b) Findings.** At the close of a shelter care hearing the court shall determine whether the child should be returned home or placed in shelter care or with a relative and shall include in the written findings and order the following:

**(1) Harm necessitating placement.** A brief statement of the harm necessitating placement, if placement is ordered;

**(2) Placement.** Placement with a specified relative, a specified private placement, or placement in shelter care, as well as any conditions related to such placement;

**(3) Findings on reasonable efforts, whether continuation in the home is contrary to the welfare of the child, and the date of removal from home.** A finding whether or not reasonable efforts were made to prevent or eliminate the need for removal or, alternatively, a determination that the child's removal from the home is necessary regardless of any services that could be provided to the child or child's family or that no additional efforts are required. A finding shall also be made as to whether continuation in the child's home would be contrary to the best interests of the child. In addition, the court shall make a finding on the date of the child's removal from home;

**(4) Visitation.** When the child is placed outside the home, a written provision permitting at least weekly visitation of the child with the parent, guardian or custodian, unless it appears to the court that at least weekly visitation would create imminent danger or be detrimental to the well-being of the child. In that case, the court may include in the order an alternative schedule of visits, or may order that visitation be supervised or prohibited. If the court determines that visitation is to be prohibited or supervised, the reasons for such determination shall be specified in the findings and order. The agency with case responsibility shall provide a copy of the visitation order to the shelter care provider or custodian.

**(5) Services and efforts to minimize disruption to the child.** The services that must be provided to the child or family and any steps that must be taken to minimize disruption to the child.

**(6) Case plan.** An order requiring the Department of Human Services to file a case plan with the court within 60 days of the date of removal from home.

**(7) Paternity testing.** Where the paternity of the child has not been established, appropriate orders for genetic testing to determine paternity.

**(8) Calendar for further proceedings.** Dates and times for mediation, the pre-trial conference, and the fact-finding hearing. If the court determines that reasonable efforts are not required, the order shall specify the date for a permanency planning hearing pursuant to Rule 69, to be held no later than 30 days after the date of that finding.

**(c) Discovery and related matters.** At the close of the initial hearing, orders may be entered with respect to discovery, investigation, examinations (drug, physical, mental), release of records (e.g., educational, medical), appointment of guardians ad litem, and other matters needed to ensure speedy resolution of the case.

### **Rule 81. Fact-Finding Hearing where Child is in Shelter Care.**

**(a) Time of hearing.** When a child has been placed in shelter care, the fact-finding hearing shall be held within 105 days following the date of removal from the child's home or within such shorter period of time as may be specified by judicial order. When a child has not been removed from his or her home, the fact-finding hearing shall be held no later than 45 days after the filing of the petition.

#### **(b) Preliminary inquiries.**

**(1)** The court shall begin the fact-finding hearing by determining whether notice of the fact-finding hearing has been given to all parties.

**(A)** If service has not been effected on a party and that party fails to appear, the court shall order that an appropriate means of service be directed to the absent party.

(B) If such service has not been effected, but the party is present, the court may proceed with the hearing if the court finds that the party received actual notice of the date of the hearing sufficiently in advance of the hearing to prepare for it.

(C) If the court finds that service has been effected upon a party, but that the party is not present, the court may proceed with the hearing only if counsel for the party is present.

(2) If a party entitled to counsel is present but is not represented by counsel and has not waived his or her right to counsel, the court may continue the hearing to a date certain in order that counsel may be retained or appointed as appropriate.

(c) **Standard of proof.** The standard of proof required to support a finding of neglect and/or abuse shall be proof by a preponderance of the evidence.

(d) **Evidence.** The Virgin Islands Rules of Evidence shall apply.

(e) **Findings of fact and conclusions of law.** The court shall issue written findings of fact and conclusions of law following the conclusion of the fact-finding hearing.

(f) **Additional orders.** When a finding of neglect or abuse has been made, the court shall enter orders on the following matters if disposition will not be held on the day of the fact-finding hearing:

(1) Date and time of disposition hearing;

(2) Date and time for filing of the disposition report and case plan pursuant;

(3) Placement of the child pending the disposition hearing. If placement outside the home is ordered pending the disposition hearing, the court shall order placement with a specified relative, a specified private placement, or placement in shelter care, as well as any conditions related to placement. If the child is returned home pending the disposition hearing, conditions of release shall be imposed if required to protect the child; The court may also place the minor in the temporary custody of the Department of Human Services with discretion as to placement;

(4) Visitation. The terms of visitation, including visitation with siblings and other relatives, shall be specified when the child is placed in shelter care or in a private placement. A copy of the visitation order shall be provided to the shelter care provider or custodian. If visitation is prohibited or suspended, the reasons shall be specified in the findings and order;

(5) Stay-away orders or no-contact orders required to protect the child or a caretaker or parent from the perpetrator of neglect and/or abuse;

(6) Further actions to be completed prior to the disposition hearing, including further testing or evaluation of the child or parents, and additional efforts to investigate additional relatives as potential caretakers for the child; and

(7) Child support.

Rules 80 – 84. Reserved

## Part F – Termination of Parental Rights Proceedings

### Rule 85. Termination of the Parent and Child Relationship; Petition.

#### (a) Initiation of Proceedings.

(1) All proceedings seeking the termination of parental rights to a child shall be initiated by the filing of a petition, signed under oath and stating the good faith of the petitioner filing it.

(2) A petition for termination of parental rights may be filed at any time by the Department of Human Services, the guardian ad litem, or the Attorney General's Office. Each petition shall be titled a petition for termination of parental rights.

(3) A petition may seek termination of parental rights to multiple children of a parent.

(4) A petition may be filed:

(A) After at least six months have passed since a child was adjudicated neglected, abandoned or abused and the child is in the court-ordered custody of a department, agency, institution, or person other than the parent; or,

(B) Immediately on adjudication that the child is neglected, abandoned or abused, when despite reasonable efforts, the parent could not be located for the fact-finding hearing or during the period from the child's removal from the home and the fact-finding hearing.

**(b) Mandatory Filing.** Unless a petition has already been filed by the child's guardian ad litem, a petition to terminate the parent and child relationship shall be filed by the Department of Human Services if any one of the following conditions has occurred, unless a notice is filed with the court specifying the agency's reason(s) for not filing such a motion:

(1) The child has been in court-ordered custody under the responsibility of The Department of Human Services or another authorized agency in the Virgin Islands for 15 of the most recent 22 months;

(2) The Family Division has determined the child has been abandoned;

(3) A court of competent jurisdiction has determined that the child's parent has:

(A) committed murder of the child's sibling or another child;

(B) committed voluntary manslaughter of the child's sibling or another child;

(C) aided or abetted, attempted, conspired, or solicited to commit such a murder or voluntary manslaughter; or

(D) committed a felony assault that has resulted in serious bodily injury to the child, the child's sibling, or another child; or

(4) A judge of the Family Division has determined that the child's parent has subjected the child to intentional or severe mental, physical, verbal or emotional abuse.

**(c) Exemptions from Mandatory Filing.** The agency need not file a petition to terminate the parent and child relationship if:

(1) A motion to terminate the parent and child relationship and/or a petition for adoption has been filed by the child's guardian ad litem. In this case the agency shall seek to be joined as a party to the pending motion; or

(2) The child and the Department of Human Services have documented in the case plan, and the court has determined, that:

(A) The child is being cared for by an approved kinship caregiver and adoption is not included in the child's permanency plan;

(B) There is a compelling reason why termination of the parent and child relationship would not be in the best interest of the child; or

(C) The agency has not offered or provided to the child's family the services identified in the case plan that are necessary for the safe return of the child to the child's home, if reasonable efforts are required to be made pursuant to 5 V.I.C. 2550.

**(d) Memorandum.** A memorandum of points and authorities shall accompany a motion to terminate the parent and child relationship. The memorandum shall include but is not limited to the following unless the information is unavailable after diligent search, or for other good cause:

(1) The name, gender, date and place of birth, and current placement of the child;

(2) Identification of the parties;

(3) The name and address of the child's parent(s);

(4) A plain and concise statement of the facts on which the termination of the parent and child relationship is sought pursuant to 5 V.I.C. § 2550 or other provisions of law;

(5) A detailed description of the physical, mental and emotional health of the child;

(6) A statement as to the general prospects for or the barriers, if any, to the adoption of the child; and

(7) A statement as to the efforts made by the moving party to locate the child's parents.

If required by law, the petition shall contain a showing that the parents were offered a case plan and did not substantially comply with it.

**(e) Required attachments.** The petitioning party shall attach to the petition:

(1) all orders that have been issued related to findings of neglect, abandonment, endangerment and placement; and

(2) a certified copy of the birth certificate of each child named in the petition unless the petitioner, after diligent search and inquiry, is unable to produce it.

**(f) Amendments.** At any time before the conclusion of an adjudicatory hearing, an amended petition may be filed or the petition may be amended by motion. However, after a written answer has been filed or the adjudicatory hearing has commenced, amendments shall be permitted only with the permission of the court unless all parties consent.

**(g) Voluntary Dismissal.** The petitioner may, at any time before entry of an order of adjudication, request a voluntary dismissal of the petition by serving a notice of request of dismissal on all parties or, if during a hearing, by so stating on the record. The court in its discretion may dismiss the petition. Unless otherwise stated in the court's order, the dismissal shall be without prejudice.

**(h) Parental Consent.**

- (1) The parents of the child may consent to the petition for termination of parental rights at any time, in writing or orally, on the record.
- (2) If, before the filing of the petition for termination of parental rights, the parents have consented to the termination of parental rights and executed surrenders and waivers of notice of hearing as provided by law, this shall be alleged in the petition and copies shall be attached to the petition and presented to the court.
- (3) If the parents appear and enter an oral consent on the record to the termination of parental rights, the court shall determine the basis on which a factual finding may be made and shall incorporate these findings into its order of disposition.

**Rule 86. Service of Petition and Notice**

**(a) Personal Service.** On the filing of a petition requesting the termination of parental rights, a copy of the petition and notice of the date, time, and place of the advisory hearing must be personally served in accord with V.I. R.Civ.P. 4 upon:

- (1) the parents;
- (2) the legal custodians or caregivers of the child;
- (3) if the natural parents are dead or unknown, a living relative of the child, unless on diligent search and inquiry no relative can be found;
- (4) any person who has physical custody of the child;
- (5) any grandparents entitled by law to notice of the adoption proceeding;
- (6) any prospective parent identified by law;
- (7) the guardian ad litem for the child or the representative of the guardian ad litem program, if the program has been appointed;
- (8) the attorney ad litem for the child if one has been appointed; and
- (9) any other person as provided by law.

**(b) Service by publication.** Service by publication shall be permitted only for parents whose identities are known but whose whereabouts cannot be determined despite a diligent search. Service by publication in these circumstances shall be considered valid service.

**(1) Diligent search.** If the location of a parent is unknown and that parent has not filed a permanent address designation with the court, the complainant shall complete a diligent search.

**(A) Affidavit of diligent search.** If the location of a parent is unknown after the diligent search has been completed, the petitioner must file with the court an affidavit of diligent search executed under oath by the person who made the search inquiry.

**(B) Court review of affidavit.** The court must review the affidavit of diligent search and enter an order determining whether the petitioner has completed a diligent search as required by law. In termination of parental rights proceedings, the clerk must not certify a notice of action until the court enters an order finding that the complainant has conducted a diligent search as required by law.

**(C) Continuing Duty.** After filing an affidavit of diligent search in a dependency or termination of parental rights proceeding, the complainant, and, if the court requires, the Department of Human Services, are under a continuing duty to search for and attempt to

serve the parent whose location is unknown until excused from further diligent search by the court. The Department of Human Services shall report on the results of the continuing search at each court hearing until the person is located or until further search is excused by the court.

**(d) Contents of Notice.**

(1) The document containing the notice to appear shall notify the required persons of the filing of the petition and must contain in type at least as large as the balance of the document the following or substantially similar language:

“FAILURE TO PERSONALLY APPEAR AT THE ADVISORY HEARING CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL RIGHTS OF THIS CHILD (THESE CHILDREN). IF YOU FAIL TO APPEAR ON THE DATE AND TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS A PARENT TO THE CHILD OR CHILDREN NAMED IN THE PETITION ATTACHED TO THIS NOTICE.”

(2) The notice of action shall contain the initials of the child and the child’s date of birth. There shall be no other identifying information of the child in the notice of action. The notice of action shall include the full name and last known address of the person subject to the notice. The notice of action shall not contain the name or any other identifying information of the other parents or prospective parents who are not subject to the notice.

**(e) Waiver of Service.** Service of process may be waived, as provided by law, for persons who have executed a written surrender of the child to the Department of Human Services.

**Rule 87. Advisory Hearing and Pretrial Conferences**

**(a) Advisory Hearing.**

(1) Unless the petition to terminate parental rights is upon the consent of the parent(s) involved, an advisory hearing on the petition to terminate parental rights must be held as soon as possible after service of process, and without any unnecessary delay.

(2) The court must:

(A) advise the parents of their right to counsel and appoint counsel in accordance with legal requirements;

(B) determine whether an admission, consent, or denial to the petition shall be entered; and

(C) appoint a guardian ad litem if one has not already been appointed.

(3) If a parent served with notice fails to personally appear at the advisory hearing, the court shall enter a consent to the termination of parental rights petition for the parent who failed to personally appear.

(4) If an admission or consent is entered by all parents for a named child included in the petition for termination of parental rights and the court finds that termination of parental rights is in the best interest of the child, the court shall proceed to disposition alternatives as provided by law.

(5) If a denial is entered, the court shall set an adjudicatory hearing within the period of time provided by law or grant a continuance until the parties have sufficient time to proceed to an adjudicatory hearing.

(6) An advisory hearing may not be scheduled if a petition is filed seeking an adjudication to voluntarily terminate parental rights. Adjudicatory hearings for petitions for voluntary termination must be set within 21 days of the filing of the petition.

**(b) Pretrial Status Conferences.** Depending on the circumstances of the case, the court may hold one or more pretrial conferences in order to:

(1) Review efforts to locate and serve all parties, including the entry of an order with respect to diligent search where needed to locate parties and the child's relatives prior to adjudication;

(2) Address any unresolved paternity issue, including the entry of appropriate orders relating to genetic testing;

(3) Address any unresolved discovery matters and any outstanding motions;

(4) Set a date and time for mediation in the case if the parties and the court agree that mediation of the case is appropriate;

(5) Set a date and time for a case management conference, if parties, counsel and social worker agree that such a case conference would be useful in streamlining issues for hearing or in reaching a disposition of the case without hearing;

(6) Enter stipulations, including voluntary relinquishments of parental rights, to which the parties may agree;

(7) Identify issues of law and fact for trial;

(8) Develop a list of possible witnesses and a brief summary of their testimony -- with designation of those who will testify as experts based on statements filed by counsel pursuant to applicable discovery rules and orders.

(9) Identify special accommodations that may be required by parties or witnesses, such as interpreters, or wheelchair access; and

(10) Confirm the date of the hearing on the motion and estimate its length.

**(c) Continuing obligation to update.** Counsel and unrepresented parties shall have a continuing obligation to update information provided during the pre-hearing conference.

**(d) Final Pretrial Conference.** Not less than 10 days before the adjudicatory hearing on a petition for involuntary termination of parental rights, the court shall conduct a pretrial status conference to determine the order in which each party may present witnesses or evidence, the order in which cross examination and argument shall occur, and any other matters that may aid in the conduct of the adjudicatory hearing.

## **Rule 88. Providing Counsel To Parties**

### **(a) Duty of the Court.**

(1) At each hearing, the court shall advise unrepresented parents of their right to have counsel present, unless the parents have voluntarily executed a written surrender of the child and consent to the entry of a court order terminating parental rights.

(2) The court shall appoint counsel for indigent parents as provided by law. The court may appoint counsel for other parties as provided by law. (3) The court shall ascertain whether the right to counsel is understood. If the right to counsel is waived by any parent the court shall ascertain if the right to counsel is knowingly and intelligently waived.

(4) The court shall enter its findings with respect to the appointment or waiver of counsel of indigent parents or the waiver of the right to have counsel present.

(5) Once counsel has been retained or appointed to represent a parent, the attorney shall continue to represent the parent throughout the proceedings or until the court has approved discontinuing the attorney-client relationship. If the attorney-client relationship is discontinued, the court shall appoint new counsel for the remainder of the proceedings.

**(b) Waiver of Counsel.**

(1) No waiver shall be accepted if it appears that the parent is unable to make an intelligent and understanding choice because of mental condition, age, education, experience, the nature or complexity of the case, or other factors.

(2) A waiver of counsel shall be made in court and be of record. The court shall question the parent in sufficient detail to ascertain that the waiver is made knowingly and intelligently.

(3) If a waiver is accepted at any hearing, the offer of assistance of counsel shall be renewed by the court at each subsequent hearing at which the parent appears without counsel.

**Rule 89. Answers And Responsive Pleadings**

**(a) No Written Answer Required.** No answer to the petition need be filed by the parent. The parent of the child may enter an oral or written answer to the petition or may appear and remain silent.

**(b) Plea of Denial.** If the parent denies the allegations of the petition, appears and remains silent, or pleads evasively, the court shall enter a denial and shall set the case for an adjudicatory hearing.

**(c) Plea of Admission or Consent.** If the parent appears and enters a plea of admission or consent to the termination of parental rights, the court shall determine that the admission or consent is made voluntarily and with a full understanding of the nature of the allegations and the possible consequences of the plea and that the parent has been advised of the right to be represented by counsel. The court shall incorporate these findings into its order of disposition, in addition to findings of fact specifying the act or acts causing the termination of parental rights.

**Rule 90. Adjudicatory Hearing**

**(a) Scheduling of Hearing.** The adjudicatory hearing shall be held within 45 days after the advisory hearing, unless all necessary parties stipulate to some other hearing date. Reasonable continuances may be granted for purposes of investigation, discovery, procuring counsel or witnesses, or for other good cause shown.

**(b) Preliminary inquiries.** The court shall begin the hearing by determining whether service has been effected on all parties, whether all parties are present, and whether all parties are represented by counsel, and shall have these facts recorded. If the court finds that service has

been effected upon an absent party who is represented by counsel who is present, the court may proceed with the hearing.

**(c) Conduct of the Hearing.** The adjudicatory hearing shall be conducted by the judge without a jury, and the Virgin Islands Rules of Evidence shall apply. At this hearing the court shall determine whether the elements required by law for termination of parental rights have been established by clear and convincing evidence.

**(d) Examination of Witnesses.** A party may call any person, including a child, as a witness. A party shall have the right to examine or cross-examine all witnesses. The court in its discretion may limit the manner in which counsel may examine a child witness.

**(e) Presence of Parties.** All parties have the right to be present at all termination hearings. A party may appear in person or, at the discretion of the court for good cause shown, by an audio or audiovisual device. No party shall be excluded from any hearing unless so ordered by the court for disruptive behavior or as provided by law. If a parent appears for the advisory hearing and the court orders that parent to personally appear at the adjudicatory hearing for the petition for termination of parental rights, stating the date, time, and location of this hearing, then failure of that parent to personally appear at the adjudicatory hearing shall constitute consent for termination of parental rights.

**(f) Joint and Separate Hearings.** When two or more children are the subject of a petition for termination of parental rights, the hearings may be held simultaneously if the children are related to each other or involved in the same case, unless the court orders separate hearings.

**(g) Motion for Judgment of Dismissal.** In all termination of parental rights proceedings, if at the close of the evidence for the petitioner the parents move for a judgment of dismissal and the court is of the opinion that the evidence is insufficient to sustain the grounds for termination alleged in the petition, it shall enter an order denying the termination and proceed with dispositional alternatives as provided by law.

**(h) Order.**

**(1) Findings and Conclusions.** The court shall make written findings of fact and conclusions of law, and shall enter an order within 45 days (or within 60 days if the court certifies that the case is complex) of the adjudicatory hearing on the motion to terminate the parent and child relationship. Copies of the order shall be served on all parents, guardian ad litem, Counsel for the child, agency and attorneys of record.

**(2) Terminating Parental Rights.**

(A) If the court finds after all of the evidence has been presented that the elements and one of the grounds for termination of parental rights have been established by clear and convincing evidence, the court shall enter a final judgment terminating parental rights and proceed with dispositional alternatives as provided by law.

(B) The order must contain the findings of fact and conclusions of law on which the decision was based. The court shall include the dates of the adjudicatory hearing in the order.

(C) The order must include a brief statement informing the parents of the right to appeal the order to the Supreme Court of the Virgin Islands.

(D) The parties may stipulate, or the court must order, that child's grandparents or the parents of the parent whose rights are terminated be allowed to maintain some contact with the child. If the court orders continued contact, the nature and frequency of this

contact must be stated in a written order. The visitation order may be reviewed on motion of any party, including a prospective adoptive parent, and must be reviewed by the court at the time the child is placed for adoption.

**(3) Denying Termination of Parental Rights.** If the court finds after all of the evidence has been presented that the grounds for termination of parental rights have not been established by clear and convincing evidence, but that the grounds for dependency have been established by a preponderance of the evidence, the court shall adjudicate or readjudicate the child dependent and proceed with dispositional alternatives as provided by law.

**(4) Dismissing Petition.** If the court finds after all of the evidence has been presented that the allegations in the petition do not establish grounds for dependency or termination of parental rights, it shall enter an order dismissing the petition.

**(i) Right to appeal.** At the conclusion of the hearing or on issuance of the order, the court shall advise all parties, orally or in writing, of the right to appeal the order, and the applicable time limits.

**(j) Review hearing.** The court may set a date for a review hearing to be held within 60 days following entry of the order.

**(k) Advice of Appellate Rights.** At the conclusion of the termination of parental rights adjudicatory hearing, the court must orally inform the parents of the right to appeal an order terminating parental rights to the Supreme Court of the Virgin Islands. Any attorney representing such parents must discuss appellate remedies with the parent and determine whether the parent elects to appeal the order terminating parental rights.

## **Rule 91. Post-Disposition Hearings**

**(a) Initial Hearing.** If the court terminates parental rights, a post-disposition hearing must be set within 30 days after the date of disposition. At the hearing, the Department of Human Services or licensed child-placing agency shall provide to the court a plan for permanency for the child.

**(b) Subsequent Hearings.** Following the initial post-disposition hearing, the court shall hold hearings every six months to review progress being made toward permanency for the child until the child is adopted or reaches the age of 18, whichever occurs first. Review hearings for alternative forms of permanent placement shall be held as provided by law.

### **(c) Withholding Consent to Adopt.**

(1) When a petition for adoption and a favorable home study have been filed and consent from the Department of Human Services has not been filed, the court shall conduct a hearing to determine if the Department of Human Services has unreasonably withheld consent.

(2) In reviewing whether the Department of Human Services unreasonably withheld its consent to adopt, the court shall determine whether the Department of Human Services abused its discretion by withholding consent to the adoption by the petitioner. In making this determination, the court shall consider all relevant information, including information obtained or otherwise used by the Department of Human Services in selecting the adoptive family.

**Rule 92. Application of Uniform Child Custody Jurisdiction and Enforcement Act.**

As required by Rule 14 of these Family Rules and Procedures, any motion filed commencing proceedings as set forth in Rule 85 of these Rules shall be accompanied by an affidavit, to the extent of affiant's personal knowledge under the Uniform Child Custody Jurisdiction and Enforcement Act. Each party has a continuing duty to inform the court of any custody proceeding in this or any other state of which information is obtained during the proceeding.

**Rule 93. Transfer of Cases Among Jurisdictions.**

If it should appear at any time that an action is pending in another jurisdiction, the court may transfer jurisdiction over the action to a more convenient forum state, may stay the proceedings, or may dismiss the action.

**Rule 94. Withdrawal of Counsel after Adjudication**

**(a) Prerequisites.** After an order terminating parental rights has been entered, the counsel of record for a parent or legal custodian in a termination of parental rights proceeding shall not be permitted to withdraw as counsel of record until the following have occurred:

- (1) The attorney certifies that the attorney has discussed appellate remedies with the parent or legal custodian.
  - (A) The attorney certifies that after discussing appellate remedies with the parent or legal custodian, the parent or legal custodian does not want to appeal the order; or
  - (B) The attorney certifies that after discussing appellate remedies with the parent or legal custodian, the parent or legal custodian wants to appeal the order, and
    - (i) a notice of appeal containing the signatures of counsel and the parent or legal custodian has been filed;
    - (ii) directions to clerk, if necessary, have been filed;
    - (iii) a motion to transcribe the requisite proceedings has been filed;
    - (iv) a designation to the court reporter specifying the proceedings that must be transcribed in order to obtain review of the issues on appeal and designating the parties to receive a copy of the transcripts has been filed; and
    - (v) an order appointing appellate counsel, if any, has been entered. Conformed copies of each of these documents shall be attached to the motion to withdraw.
- (2) If the attorney has been unable to contact the parent or legal custodian regarding appellate remedies, the attorney certifies the efforts made to contact the parent or legal custodian.

**(b) Service of Order Appointing Appellate Counsel.** Any order appointing appellate counsel shall be served on the parties and filed with the clerk of the appellate court.