

~~ten~~ fourteen days after leave has been granted pursuant to SUPER. CT. R. 65, the time for appeal for all parties runs from the entry of the order disposing of the last such motion outstanding. This provision applies to a motion:

- (i) for judgment under FED. R. CIV. P. 50(b);
- (ii) to amend or make additional findings of fact under FED. R. CIV. P. 52(b), whether or not granting the motion would alter the judgment;
- (iii) to alter or amend the judgment under SUPER. CT. R. 50;
- (iv) for a new trial under SUPER. CT. R. 50;
- (v) for a new trial under SUPER. CT. R. 65; or
- (vi) for relief under FED. R. CIV. P. 60 if the motion is filed within ~~ten~~ fourteen days after the entry of judgment.

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

(5) The Superior Court shall have authority to consider and deny any motion filed for relief under FED. R. CIV. P. 60 that is filed more than ~~ten~~ fourteen days after the final judgment or order is entered. If the Superior Court would otherwise be disposed to grant such a motion that is filed more than ~~ten~~ fourteen days after entry of judgment or order, it shall so notify the Supreme Court and request that the entire matter be remanded to the Superior Court for further action. The Supreme Court shall grant such request in its discretion, taking into consideration the interests of judicial efficiency and the possibility of abuse. The Superior Court shall have no authority to grant motions specified in Rule 5(a)(4)(i)-(vi) filed more than ~~ten~~ fourteen days after the entry of judgment or order, or filed more than ~~ten~~ fourteen days after leave has been granted pursuant to SUPER. CT. R. 65, nor shall the untimely filing of such motion affect the time for appeal or the jurisdiction of the Supreme Court over the appeal.

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

....

(8) The Superior Court, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal upon motion filed not later than thirty days after the expiration of the time prescribed by this Rule 5(a). Any such motion must be served upon the remaining parties. Notice of appeal or any motion for extension of time which is filed after expiration of the prescribed time shall be given to the other parties in accordance with the rules of the Superior Court. No such extension shall exceed thirty days past such prescribed time or ~~ten~~ fourteen days from the date of entry of the order granting the motion, whichever occurs later.

....

(10) The Supreme Court, if it finds (a) that a party entitled to notice of the entry of a judgment or order did not receive such notice from the Clerk of the Superior Court or any party within twenty-one days of its entry and (b) that no party would be substantially prejudiced, may, upon motion filed within ninety days of entry of the judgment or order or within ~~seven~~ ten days of receipt of such notice, whichever is earlier, reopen the time for appeal for a period of fourteen days from the date of entry of the order reopening the time for appeal. This Rule shall not be construed as excusing the parties from their affirmative responsibility to regularly monitor the status of their case in the Superior Court.

It is further

ORDERED that Supreme Court Rules 5(b)(1)-(3) be **AMENDED** by striking and inserting language as follows:

(1) In a criminal case, a defendant shall file the notice of appeal in the Superior Court within ~~ten~~ fourteen days after the entry of (i) the judgment or order appealed from or (ii) a notice of appeal by the Government. A notice of appeal filed after the announcement of a decision, sentence, or order -- but before entry of the judgment or order -- is treated as filed on the date of and after the entry of judgment. If a defendant makes a timely motion specified immediately below, an appeal from a judgment of conviction must be taken within ~~ten~~ fourteen days after the entry of the order disposing of the last such motion outstanding, or within ~~ten~~ fourteen days after the entry of the judgment of conviction, whichever is later. This provision applies to a timely motion:

- (i) for judgment of acquittal pursuant to FED. R. CRIM. P. 29;
- (ii) for arrest of judgment pursuant to FED. R. CRIM. P. 34;
- (iii) for a new trial on any ground other than newly discovered evidence pursuant to SUPER. CT. R. 135; or
- (iv) for a new trial based on the ground of newly discovered evidence, pursuant to SUPER. CT. R. 135, if the motion is filed before or within ~~ten~~ fourteen days after the entry of the judgment. If an appeal is already pending at the time a motion for new trial based on the ground of newly

discovered evidence is filed, the Superior Court may grant the motion only on remand of the case.

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

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

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

The Superior Court shall have authority to consider and deny any motion for a new trial based on the ground of newly discovered evidence, pursuant to SUPER. CT. R. 135, that is filed more than ~~ten~~ fourteen days after the final judgment or order is entered. If the Superior Court would otherwise be disposed to grant such a motion that is filed more than ~~ten~~ fourteen days after entry of judgment or order, it shall so notify the Supreme Court and request that the entire matter be remanded to the Superior Court for further action. The Supreme Court shall grant such request in its discretion, taking into consideration the interests of judicial efficiency and the possibility of abuse. The Superior Court shall have no authority to grant motions specified in Rule 5(b)(1)(i)-(ii) filed more than ~~seven~~ ten days after the entry of judgment or order, nor shall the untimely filing of such motion affect the time for appeal or the jurisdiction of the Supreme Court over the appeal.

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

It is further

ORDERED that Supreme Court Rules 5(e) be **AMENDED** by striking and inserting language as follows:

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

It is further

ORDERED that Supreme Court Rules 6(a), (c), and (e) be **AMENDED** by striking and inserting language as follows:

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

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

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

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

It is further

ORDERED that Supreme Court Rule 7(j) be **AMENDED** by striking and inserting language as follows:

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

It is further

ORDERED that Supreme Court Rules 10(b)(1)-(2) and (c) be **AMENDED** by striking and inserting language as follows:

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

(1) If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion. Within ~~ten~~ fourteen days after filing the notice of appeal (or entry of the order disposing of the type of timely motion specified in Rule 5(a)(4) or 5(b)(1)), the appellant shall order from the reporter a transcript of such parts of the proceedings not already on file as the appellant deems necessary. Orders for transcripts and/or a certificate that a particular reporter's transcript is not necessary shall be presented on the Transcript Purchase Order ["TPO"] form provided by the Clerk of the Superior Court and shall include the name of the reporter. No other form may be used. A separate TPO form shall be submitted for each reporter who participated in the proceeding being appealed. The TPO form shall specify which transcript is being requested and which is not necessary, where a reporter recorded the proceeding on more than one day and one or more of those transcripts is not needed for appeal. Any unnecessary expense resulting from an ambiguous request will be the financial responsibility of the party making such request. One copy of the form shall be served on each individual reporter from whom a transcript is ordered; the second copy shall be filed with the Clerk of the Supreme Court; the third copy shall be served on the appellee; and the fourth copy shall be filed with the Clerk of the Superior Court.

(2) Unless the entire transcript is to be included, the appellant shall, within ~~ten~~ fourteen days of filing the notice of appeal (or entry of the order

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

.....

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

It is further

ORDERED that Supreme Court Rule 12(b) be **AMENDED** by striking and inserting language as follows:

(b) Statement of Representation. Within ~~ten~~ fourteen days after filing a notice of appeal, unless another time is designated by the Supreme Court, the attorney who filed the notice of appeal shall file with the Clerk of the Supreme Court an appeal information statement, naming each party represented on appeal by that attorney. The appeal information statement form will be provided by the Clerk of the Supreme Court.

It is further

ORDERED that Supreme Court Rule 16(b) be **AMENDED** by striking language as follows:

(b) **Computation of Time.** For purposes of the Supreme Court, in computing any period of time prescribed or allowed by these Rules, by an order of the Court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the Clerk of the Supreme Court inaccessible, in which event the period runs until the next day which is not one of the aforementioned excluded days. ~~When the period of time prescribed or allowed is less than eleven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.~~ As used in this Rule, "legal holiday" refers to the holidays specified in 1 V.I.C. § 171 and includes only 22 January 1 (New Year's Day), January 6 (Three King's Day), Third Monday in January (Martin Luther King, Jr.'s Birthday), Third Monday in February (Presidents Day), March 31 (Transfer Day), Holy Thursday, Good Friday, Easter Monday, Last Monday in May (Memorial Day), July 3 (V.I. Emancipation Day), July 4 (Independence Day), First Monday in September (Labor Day), Second Monday in October (Columbus Day and Puerto Rico Friendship Day), November 1 (D. Hamilton Jackson Day), November 11 (Veterans Day), Fourth Thursday in November (Thanksgiving Day), December 25 (Christmas Day), December 26 (Christmas Second Day) and such other days as the President, or the Governor may by proclamation declare to be holidays.

It is further

ORDERED that Supreme Court Rule 21(a) be **AMENDED** by striking and inserting language as follows:

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

It is further

ORDERED that Supreme Court Rules 24(b) and (d) be **AMENDED** by striking and inserting language as follows:

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

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

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

....

(d) **Sanctions Pursuant to Determination of Contents of Appendix.** The Court, *sua sponte* by rule to show cause or on the motion of any party, may impose sanctions in the form of denial of all or some of the costs of the appeal upon finding that any party has unreasonably and vexatiously caused the inclusion of materials in an appendix that are unnecessary for the determination of the issues presented on appeal. A party filing such a motion shall do so within ~~ten~~ fourteen days after a bill of costs has been served. The movant shall submit with the motion an itemized statement specifically setting forth, by name and appendix page number, the item or items that the movant asserts were unnecessarily included in the appendix. Any party against whom sanctions are requested may file an answer to the motion or rule to show cause. The answer shall be filed within ~~ten~~ fourteen days after service of the motion or rule to show cause

It is further

ORDERED that Supreme Court Rule 30(b) be **AMENDED** by striking and inserting language as follows:

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

It is further

ORDERED that Supreme Court Rule 32(a) be **AMENDED** by striking and inserting language as follows:

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

It is further

ORDERED that Supreme Court Rule 35(e) be **AMENDED** by striking and inserting language as follows:

(e) **Dismissal for Failure to Prosecute.** When an appellant fails to comply with the Rules of the Supreme Court, the Clerk of the Supreme Court shall issue written notice to counsel or to the appellant who appears *pro se* that upon the expiration of fourteen days from the date of the notice, the appeal may be

dismissed for want of prosecution unless appellant remedies the deficiency within that time. If the deficiency is not remedied within this period, the Clerk is authorized to dismiss the appeal for want of prosecution and issue a certified copy thereof to the Clerk of the Superior Court as the mandate. The appellant shall not be entitled to remedy the deficiency after the appeal is dismissed except by order of the Court. A motion to set aside such an order must be justified by the showing of good cause and may not be filed after ~~ten~~ fourteen days of the date of dismissal.

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

It is further

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

ORDERED that these amendments **WILL TAKE EFFECT** on January 1, 2010, and **SHALL REMAIN IN EFFECT** unless modified as a result of comments from the public and the local Bench and bar. It is further

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

SO ORDERED this 10th day of December, 2009.

_____/s/_____
IVE ARLINGTON SWAN
Associate Justice

_____/s/_____
MARIA M. CABRET
Associate Justice

_____/s/_____
RHYS S. HODGE
Chief Justice

In re: Amendments to V.I. Rules of Appellate Procedure

Order of the Court

Page 12 of 12

ATTEST:

VERONICA J. HANDY, ESQ.

Clerk of the Court