

VIRGIN ISLANDS SUPREME COURT RULE 210

(as amended November 2, 2011)

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

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

210.1 Panels of Attorneys

- (a) *Establishment of Attorney Panel.* The Clerk of the Supreme Court, at the direction of the Supreme Court and under the supervision of the Chief Justice, shall prepare and maintain a panel of regularly admitted members of the Virgin Islands Bar who are eligible to practice law in the Virgin Islands and who have volunteered, been recommended, or otherwise selected to provide representation to indigent defendants on a recurring basis.
- (b) *Selection of Attorneys to Serve on Panel.* The Chief Justice may add or remove attorneys from the panel at any time as he or she sees fit, based on the qualifications and availability of those attorneys and subject to review by the entire Supreme Court. The Clerk of the Supreme Court shall accept applications and receive recommendations for designation to the panel, and submit these names to the Chief Justice for consideration and final approval. The attorneys designated on the panel may be identified by their primary Judicial Division of the Superior Court to facilitate appointments to cases originating in either Judicial Division.
- (c) *Absence or Insufficiency of Attorney Panel.* In the event a panel has not been established, or the number of attorneys who have voluntarily applied to join the panel is insufficient to provide adequate representation to all litigants eligible for court-appointed counsel on appeal, the Clerk is authorized to appoint, on a rotating basis, any regularly-admitted member of the Virgin Islands Bar who is eligible to practice law in the Virgin Islands.
- (d) *Docketing of Application.* An attorney may apply for an appointment to the attorney panel by submitting an application, on a form prepared by the Clerk of the Supreme Court, and filing it with the Clerk. Each application shall be docketed as a separate original proceeding, assigned a miscellaneous case number, and shall be designated as confidential for purposes of Supreme Court Rule 40.6. The Chief Justice shall, by order, grant or deny the application.

210.2 Determination of Need for Appointed Counsel

- (a) *Generally.* In every direct criminal or quasi-criminal appeal, whether undertaken by a defendant or the government, a defendant who has been granted permission to proceed in forma pauperis pursuant to Supreme Court Rule 3(b) and 4 V.I.C. § 513 is eligible to have counsel appointed for him or her by the Supreme Court. If a defendant has not moved to proceed in forma pauperis on appeal and no appearance has been made on the

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

- (b) *Continuation of In Forma Pauperis Status.* Pursuant to Supreme Court Rule 3(c), a criminal defendant who has received permission to proceed in forma pauperis in the Superior Court may continue to proceed in forma pauperis in the Supreme Court, and shall remain eligible for appointment of counsel in the Supreme Court, without filing a new motion to proceed in forma pauperis, provided that the defendant's financial circumstances have not changed.
- (c) *Continued Inquiry Permitted.* At any time after granting in forma pauperis status, allowing in forma pauperis status to continue, or appointing counsel, the Supreme Court may inquire into a defendant's financial status to determine whether the defendant continues to meet the requirements for in forma pauperis status or otherwise remains financially unable to employ counsel. Should an attorney appointed to represent a defendant discover, during the course of that representation, that the defendant is financially able to pay for his own legal representation, court-appointed counsel shall, notwithstanding any rule to the contrary, promptly notify the Court of this fact.
- (d) *Appointment Authorized When in the Interests of Justice.* Notwithstanding Rule 210.2(a) or any other court rule, the Supreme Court may, at its sole discretion, appoint an attorney to represent a litigant in any matter, whether criminal or civil, if it determines that appointment of an attorney is required in the interests of justice.

210.3 Appointment of Counsel

- (a) *Continuation of Superior Court Representation.* Any attorney appointed to represent a defendant in the Superior Court pursuant to 5 V.I.C. § 3503 shall continue to represent that litigant on appeal unless expressly relieved by order of the Superior or Supreme Court. After proceedings in the Superior Court have concluded, the Superior Court may not grant any court-appointed attorney permission to withdraw as counsel until it has ascertained that a notice of appeal has been filed in the Supreme Court on the litigant's behalf or that the litigant has chosen not to file a notice of appeal despite having been made aware of the right to appeal. In the event the Superior Court has granted an attorney permission to withdraw after a notice of appeal has been filed, the Superior Court and the attorney who has been granted permission to withdraw shall immediately notify the Supreme Court of the fact and the need to appoint an attorney to represent the litigant on appeal.
- (b) *Appointments by Supreme Court.* In those cases in which the Supreme Court makes an appointment in the first instance, or in which it becomes necessary to appoint a new attorney to represent a litigant on appeal, the Clerk of the Supreme Court shall appoint the Office of the Territorial Public Defender to represent the litigant. In the event the Office of the Territorial Public Defender is disqualified or is authorized by the Chief Justice or the Supreme Court to withdraw its representation of the litigant, the Clerk of the Supreme Court shall, at the direction of the Supreme Court and under the supervision of the Chief Justice, appoint on a rotating basis an attorney from the panel established

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

- (c) *Multiple Court-Appointed Attorneys Prohibited.* Absent a determination by the Supreme Court that a case is exceptionally complex, only a single attorney may be appointed to represent a single defendant.
- (d) *Substitution of Counsel.* The Supreme Court may, on its own motion or by motion of court-appointed counsel, substitute one court-appointed counsel for another.
- (e) *Privately Retained Counsel.* Privately retained counsel representing the defendant in the Superior Court shall be eligible, upon a finding by the Supreme Court that the defendant now qualifies for *in forma pauperis* status and has become financially unable to pay counsel whom he has previously retained, for an appointment to serve as the defendant's court-appointed appellate counsel. Such appointments may be, but are not required to be, made retroactive to include any representation in the Supreme Court furnished prior to the appointment. If a litigant is unable to pay privately retained counsel and privately retained counsel does not desire an appointment to serve as the litigant's court-appointed appellate counsel, privately retained counsel nevertheless remains obligated to continue to represent the litigant and to safeguard the litigant's rights, including filing a notice of appeal in the Supreme Court as well as a motion to proceed *in forma pauperis* and for appointment of counsel in the Supreme Court, until new appellate counsel is appointed. The Supreme Court reserves the right to order privately retained counsel to continue to represent the litigant on appeal.
- (f) *Cases Involving Multiple Defendants.* In appeals of cases involving more than one defendant, one or more attorneys may be appointed to represent all defendants on appeal, but where circumstances warrant—such as conflicting interests of different defendants—separate attorneys may be appointed to represent each defendant.
- (g) *Duty to Protect Defendant's Rights.* If, after an adverse decision by this Court, the defendant seeks to file a petition for writ of certiorari, court-appointed counsel shall assist the defendant in preserving his right to file a petition for writ of certiorari and filing any other necessary and appropriate documents in connection therewith, including filing motions to proceed *in forma pauperis* and for appointment of counsel, and shall otherwise proceed in accordance with the rules of the court to which certiorari is sought.
- (h) *Remands to Superior Court.*
 - (1) If the Supreme Court, after reversing or affirming a decision of the Superior Court, remands the matter for further proceedings in the Superior Court, court-appointed counsel has a continuing duty to represent the defendant in the Superior Court until expressly relieved of such responsibilities by order of the Superior Court.
 - (2) In the event the Supreme Court holds an appeal in abeyance pending a limited remand to the Superior Court, court-appointed counsel has a continuing duty to represent the

defendant in those proceedings. During such a limited remand, only the Supreme Court shall have jurisdiction to grant a court-appointed attorney permission to withdraw as counsel.

210.4 Payment of Appointed Counsel

- (a) *Compensation and Reimbursement.* Counsel appointed to represent a defendant in this Court pursuant to Supreme Court Rule 210.3 shall be compensated at the rates set forth in “Addendum A” to this Rule, which the Supreme Court may change from time to time, and may receive reimbursement for expenses reasonably incurred pursuant to that representation.
- (b) *Final Payment.* No later than 90 days after the date the Supreme Court issues its final order or opinion, court-appointed counsel may submit a claim for compensation and reimbursement, using forms prepared and furnished by the Clerk of the Supreme Court. All claims for final payment must, at a minimum, include a written statement specifying the time expended, services rendered, and expenses incurred while the case was pending in the Supreme Court.
- (c) *Interim Payment Prohibited.* Interim payments to court-appointed counsel, absent permission of the Chief Justice, are expressly prohibited. Permission for interim payment shall not be granted unless court-appointed counsel has made a strong showing that extraordinary circumstances warrant an interim payment in a particular matter.
- (d) *Disallowed Compensation and Reimbursement.* Court-appointed counsel may not be compensated or reimbursed for:
 - (1) work performed by, or consultations with, other attorneys, paralegals, administrative assistants, law clerks, investigators, consultants, or other professionals unless court-appointed counsel sought, and obtained, permission from this Court to utilize such individuals; or
 - (2) activities adverse to the interests of the defendant or that are not necessary to providing full and fair representation to the defendant, including, but not limited to, motions to withdraw as counsel, motions for extension of time, motions for leave to file out of time, and time spent preparing court-appointed counsel’s request for payment.
- (e) *Reasonableness of Payment Request.* Pursuant to 5 V.I.C. § 3503, all payments to court-appointed counsel must be reasonable. At all times, the burden of establishing that a request for compensation and reimbursement is reasonable remains with court-appointed counsel. Except for requests for final payment that may be reviewed by the Clerk of the Supreme Court pursuant to Supreme Court Rule 210.4(f), the Chief Justice shall determine the reasonableness of any claim for payment or, at his or her discretion, may refer the matter to the entire Supreme Court. Absent a showing that a matter is unusually complex or novel, claims for final payment exceeding the maximum amounts set forth in “Addendum A” are presumptively unreasonable.
- (f) *Authority of Clerk to Approve or Reject Final Payment.* The Clerk of the Supreme Court may approve or reject any claim for final payment that does not exceed the maximum amounts set forth in “Addendum A,” inclusive of any interim payments previously authorized. Upon motion of court-appointed counsel, the Chief Justice may review any

decision entered by the Clerk pursuant to this Rule.

- (g) *Issuance of Payment.* Upon approval by the Clerk or the Chief Justice, as the case may be, the Clerk shall forthwith forward all approved claims to the Office of the Administrative Director of the Supreme Court for payment. In the event a claim for payment has been rejected, payment shall not issue until court-appointed counsel has submitted—and the Clerk or the Chief Justice, as the case may be, has approved—a new request for compensation and reimbursement curing the deficiencies that resulted in rejection of the previous request for payment.
- (h) *Exclusive Payment.* Any payments authorized pursuant to this Rule shall be the sole compensation afforded to a court-appointed appellate attorney. Under no circumstances may a court-appointed attorney request or accept any payment or promise of payment for representation of a litigant. Any court-appointed attorney suspected of requesting or accepting any payment in violation of this provision may be referred to the appropriate Subcommittee of the Ethics & Grievance Committee of the Virgin Islands Bar for further investigation and, if appropriate, a formal disciplinary proceeding.
- (i) *Proceedings in Other Courts.* Any court-appointed attorney who files and prosecutes a petition for writ of certiorari in the United States Court of Appeals for the Third Circuit or the Supreme Court of the United States or who represents the defendant in subsequent Superior Court proceedings shall be compensated by and pursuant to the rules governing proceedings in those courts.
- (j) *Territorial Public Defender.* The Supreme Court shall not, as part of its own budget, compensate or reimburse the Office of the Territorial Public Defender for any expenses associated with its representation of a litigant, including the costs of transcripts in the trial court.
- (k) *Docketing of Compensation Request.* A court-appointed attorney may seek an interim or final payment by submitting an application, on a form prepared by the Clerk of the Supreme Court, and filing it with the Clerk along with the written statement required by Supreme Court Rule 210.4(b). Each application shall be docketed as a separate original proceeding, assigned a miscellaneous case number, and shall be designated as confidential for purposes of Supreme Court Rule 40.6. An application for payment under this Supreme Court Rule 210.4 need not be served upon counsel for any other party in the underlying Supreme Court proceeding. The Clerk or the Chief Justice, as the case may be, shall accept, reject, or modify the payment request by order.

210.5 Forms and Reports

- (a) *Standard Forms.* The Clerk of the Supreme Court shall, in collaboration with the Office of the Administrative Director of the Supreme Court, prepare standardized forms, including forms for use by a litigant seeking to proceed *in forma pauperis* and for final payment of court-appointed counsel, which, upon approval by the Supreme Court, may be used by litigants and attorneys.
- (b) *Reports.* The Clerk of the Supreme Court shall submit reports on the appointment of counsel under this Rule to the Office of the Administrative Director of the Supreme Court, in such form and at such times as the Administrative Director of the Supreme Court or the Chief Justice may specify.

ADDENDUM “A”

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

(effective October 1, 2010)

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