

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

IN RE:) **PROMULGATION No. 2017-003**
ADOPTION OF RULE GOVERNING)
THE APPOINTMENT OF RETIRED)
JUDICIAL OFFICERS)
_____)

ORDER OF THE COURT

Pursuant to its inherent authority and the authority granted to it by section 21(c) of the Revised Organic Act of 1954, and title 4, sections 24, 32(f), and 74a of the Virgin Islands Code, and the Supreme Court of the Virgin Islands hereby proposes the adoption of Supreme Court Rule 104, relating to the appointment of retired judicial officers for temporary service within the Virgin Islands Judiciary. Accordingly, it is hereby

ORDERED that the language designated as “Exhibit 1” to this Order **SHALL BE ADOPTED** as Supreme Court Rule 104, **effective February 1, 2017**. It is further

ORDERED that, pursuant to Supreme Court Rule 37, the Advisory Committee on Rules, as well as the public and members of the local Bench and Bar, **MAY SUBMIT WRITTEN COMMENTS** on these proposed amendments to the Clerk of the Court within thirty (30) days of entry of this order. It is further

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

SO ORDERED this 18th day of January, 2017.

/s/ Ive Arlington Swan
IVE ARLINGTON SWAN
Associate Justice

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

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

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

Exhibit 1

VIRGIN ISLANDS SUPREME COURT RULE 104

(adopted February 1, 2017)

RULES GOVERNING THE APPOINTMENT OF RETIRED JUDICIAL OFFICERS

The Supreme Court of the Virgin Islands, in order to effectuate the provisions of 4 V.I.C. §§ 24 and 74a, adopts the following procedure to appoint and assign senior or retired judicial officers for temporary service within the Virgin Islands Judiciary.

104.1 Utilization of Retired Judicial Officers

(a) The Chief Justice of the Virgin Islands may temporarily assign a retired judicial officer to one or more specific cases, for a specific period of time, or for a special circumstance, such as consideration of a particular type of docket. For purposes of this Rule, a “retired judicial officer” is any senior, retired, or former judicial officer who is eligible to be recalled or designated for temporary service under sections 24 or 74a of title 4 of the Virgin Islands Code.

(b) The Administrator of Courts shall maintain for the Chief Justice a roster of retired judicial officers who are willing and able to undertake judicial duties within the Virgin Islands Judiciary when designated and assigned as provided in this Rule.

104.2 Utilization of Retired Judicial Officers: Supreme Court

Whenever a justice is unable to hear a case due to recusal, illness, absence or other reasons, the Chief Justice shall appoint a retired judicial officer in accordance with Section 10.3 of the Internal Operating Procedures of the Supreme Court.

104.3 Utilization of Retired Judicial Officers: Superior Court

(a) The Presiding Judge of the Superior Court of the Virgin Islands may request the Chief Justice to temporarily assign a retired judicial officer to hold court pursuant to this Rule and for any of the following reasons:

(1) The Superior Court, or a district or division thereof, has an overburdened docket or anticipates an extended trial that will disrupt its docket;

(2) A judge has recused from one or more specific cases and assigning the case to another active judge is not possible or not further the interests of judicial economy;

(3) A judge will be temporarily absent due to illness or inability to attend to judicial duties, a personal or family emergency that interferes with the performance of judicial duties, the taking of a reasonable vacation or attendance at a continuing legal education conference, seminar, or workshop, and the judge cannot reasonably schedule his or her docket to eliminate the need for a replacement during the absence;

(4) a permanent vacancy exists on the Superior Court that has not yet been filled in accordance with title 4, section 72(a) of the Virgin Islands Code; or

(5) any extraordinary circumstance approved by the Chief Justice.

(b) The request of the Presiding Judge shall be in writing, state the reason for the request, and recommend the type and length of assignment requested; provided, however, that the Presiding Judge may request the assignment of a retired judicial officer by telephone or other means if time is of the essence and the request is subsequently confirmed in writing.

(c) The Presiding Judge may request that the Chief Justice assign a specific retired judicial officer who has expressed a willingness to accept the assignment. However, if the Presiding Judge has recused from the case, the Presiding Judge may not request that a specific retired judicial officer be assigned to that case. The Chief Justice is not required to assign a specific retired judicial officer requested by the Presiding Judge.

(d) Nothing in this Rule shall preclude the Chief Justice from exercising his or her authority under sections 24 or 74a of title 4 of the Virgin Islands Code to assign a retired judicial officer to the Superior Court in the absence of a request from the Presiding Judge.

104.4 Designation Order

The Chief Justice shall sign a designation order each time a retired judicial officer is assigned for temporary service within the Virgin Islands Judiciary. If the assignment is for one or more specific cases, it shall state the case caption(s), case number(s), and any other pertinent identifying information. If the assignment is for a specific period of time, it shall state the dates the assignment shall be in effect. If the assignment is for a specific circumstance not covered by a specific case or for a specific period of time, it shall state the special circumstance.

The designation order shall be filed with the Clerk of the Supreme Court, who shall assign it a miscellaneous case number and promptly transmit a copy to the Clerk of the Superior Court, the Presiding Judge, all judicial officers, and all counsel and unrepresented parties in any pending cases to which the retired judicial officer has been assigned.

104.5 Powers; Duration of Assignment

(a) Except as provided in subsections (b) and (c) of this Rule 104.5, a retired judicial officer duly assigned under this Rule shall have all the powers of a judicial officer of the court to which he or she is assigned.

(b) When a retired judicial officer is assigned to one or more specific cases, or to a specific circumstance, the assignment shall continue until its conclusion, including any post-judgment proceedings, unless and until the assignment is rescinded by the Chief Justice. If case assigned to a retired judicial officer is appealed and subsequently remanded for further proceedings, the retired judicial officer may continue to preside over the case on remand without the need for a new designation order, provided that he or she still remains eligible under sections 24 or sections 74a of title 4 of the Virgin Islands Code. A retired judicial officer who has been assigned only to one or more specific cases, or to a specific circumstance, may not exercise any other judicial duties unless a new designation order has been issued expanding the assignment.

(c) When a retired judicial officer is assigned to a court for a specific period of time, the

retired judicial officer shall hear cases in the same manner as other judges assigned to that court (or, if applicable, the assigned district or division). If one or more matters presented to the retired judicial officer is not concluded by the end of the time period, the Chief Justice may enter a new designation order permitting the retired judicial officer to conclude the matter(s).

104.6 Expenses; Per Diem; Office Supplies

(a) A retired judicial officer who has been temporarily assigned to serve in the Virgin Islands Judiciary shall be reimbursed for his or her reasonable expenses actually incurred in conjunction with their service, and shall receive a per-diem allowance equivalent to 1/260 of the annual salary of a judicial officer on the assigned court.

(b) No retired judicial officer may receive a per-diem allowance unless he or she has devoted at least two hours to their duties for the day the per-diem is claimed.

(c) The Administrator of Courts shall insure that, when performing the assigned duties of judicial officer under this Rule, a retired judicial officer be provided with office space, support staff, a telephone, and appropriate supplies as needed, provided that the retired judicial officer has not already received office space, support staff, and appropriate supplies in conjunction with another judicial appointment.