

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

IN RE:) **PROMULGATION No. 2017-007**
)
AMENDMENTS TO THE RULES)
GOVERNING THE APPOINTMENT OF)
COUNSEL TO REPRESENT INDIGENT)
PARTIES.)
 _____)

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, the Supreme Court of the Virgin Islands proposes the following amendments to the Rules Governing the Appointment of Counsel to Represent Indigent Parties. Accordingly, it is hereby

ORDERED that the Rules Governing the Appointment of Counsel to Represent Indigent Parties, designated as Supreme Court Rule 210, is **HEREBY AMENDED** by striking all existing language in its entirety and replacing it with the new language attached hereto, and that Superior Court Rule 20 is **HEREBY REPEALED**. It is further

ORDERED that attorneys who volunteered to serve to represent indigent parties under former Superior Court Rule 20 and the prior version of Supreme Court Rule 210 **SHALL BE TRANSFERRED** to the following Private Attorney Panels under amended Supreme Court Rule 210 without the need for any further application:

Former Panel	New Private Attorney Panels
Supreme Court Panel	Appeals
Superior Court “Tier 1” Criminal Division Panel	Felonies
Superior Court “Tier 2” Criminal Division Panel	Misdemeanors
Superior Court Family Division Panel	Juvenile & Guardian Ad Litem
Superior Court Pro Bono Civil Division Panel	<i>none</i>

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, unless modified as a result of comments submitted to the Court, the proposed amendments to the Rules Governing the Appointment of Counsel to Represent Indigent Parties **SHALL TAKE EFFECT on July 1, 2017**. It is further

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

SO ORDERED this 1st day of June, 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

VIRGIN ISLANDS SUPREME COURT RULE 210

(as amended July 1, 2017)

RULES GOVERNING THE APPOINTMENT OF COUNSEL TO REPRESENT INDIGENT PARTIES

The Supreme Court of the Virgin Islands, in order to effectuate the provisions of 5 V.I.C. §§ 2505 and 3503, adopts the following procedure to provide and secure adequate representation in both the Superior Court of the Virgin Islands and the Supreme Court of the Virgin Islands for any person entitled to the adequate representation of counsel who is financially unable to employ such counsel.

210.1 Determination of Need for Appointed Counsel

(a) The Supreme Court or the Superior Court, as the case may be, shall appoint counsel for a person financially unable to obtain adequate representation when appointment of counsel is required under the Sixth Amendment to the United States Constitution, the Revised Organic Act of 1954, or other law applicable to the Virgin Islands.

(b) Before appointment of counsel under this Rule, the court shall inquire into, and make a finding, as to whether the person is financially unable to obtain adequate representation. At any time after making such a finding, the court may continue to inquire into the person's financial status to determine whether the person qualifies for court-appointed counsel.

(c) A criminal defendant who has been found by the Superior Court to be financially unable to obtain adequate representation shall remain eligible for appointment of counsel in the Supreme Court without the filing of a new motion, provided that the defendant's financial circumstances have not changed.

(d) Notwithstanding this Rule, a court may, at its discretion, appoint an attorney to represent a litigant in any matter, whether criminal or civil, if authorized pursuant to its inherent power or other provisions of Virgin Islands law.

210.2 Manner of Appointment

(a) The Chief Justice of the Virgin Islands or the most senior Justice serving on a panel of the Supreme Court, as well as each Judge and Magistrate Judge of the Superior Court (hereafter the "presiding judicial officer") shall appoint counsel in the order set forth below:

1. The Office of the Territorial Public Defender
2. The appropriate Private Attorney Panel
3. Regularly-admitted members of the Virgin Islands Bar Association eligible to practice law in the Virgin Islands, subject to the following provisions:
 - i. A regularly-admitted member may only be appointed as a upon a finding of the presiding judicial officer that the Office of the Territorial Public Defender

- cannot ethically undertake the representation, and that the appropriate Private Attorney Panel is also insufficient to provide adequate representation.
- ii. The Judicial Branch Administrative Office, with the collaboration of the Clerks of the Supreme and Superior Courts and the Standing Committee on Indigent Appointments, shall maintain, and update no less than quarterly, an alphabetical roster of regularly-admitted members of the Virgin Islands Bar Association, which shall exclude attorneys who have joined a Private Attorney Panel as well as those attorneys entitled to an exemption under Rule 210.2(a)(3)(iv). The roster shall identify attorneys by Judicial District, based on the business address provided by the attorney in the most recent Annual Registration Statement filed with the Office of Disciplinary Counsel. Attorneys with a business address outside of the U.S. Virgin Islands shall be assigned to a Judicial District by the Clerk of the Supreme Court until and unless the attorney informs the Clerk of the Supreme Court, in writing, that he or she prefers to accept appointments in a different Judicial District.
 - iii. Once the presiding judicial officer has made the findings required by Rule 210.2(a)(3)(i), the clerk of the court in which the matter is pending shall appoint private counsel from the roster alphabetically from within the Judicial District in which the matter originated, irrespective of any other considerations; *provided, however*, that if an attorney appointed under this Rule 210.2(a)(3) is subsequently granted permission to withdraw as counsel, he or she shall receive the next appointment under this Rule within his or her Judicial District notwithstanding the alphabetical rotation.
 - iv. Those employed by a government agency or whose Board or Committee service includes an exemption from involuntary appointments shall be exempt from rotational appointments under this Rule 210.2(a)(3). However, Attorneys otherwise exempt from may nevertheless volunteer to serve on a Private Attorney Panel or agree to accept rotational appointments, provided that such representation does not constitute a conflict of interest.
 - v. Whenever private counsel is appointed pursuant to this Rule 210.2(a)(3), the clerk of the court in which the appointment was made shall promptly notify the Judicial Branch Administrative Office and the Standing Committee on Indigent Appointments of the appointment.

(b) The presiding judicial officer may appoint counsel in derogation of the order set forth above under the following circumstances, provided that the reason is set forth in the record:

1. Privately retained counsel representing the party in the proceeding shall be eligible, upon a finding that the party is financially unable to continue to pay retained counsel, for an appointment to serve as court-appointed private counsel;
2. The presiding judicial officer may appoint the same lawyer to represent the same party who has more than one pending matter, regardless of whether the matters have been consolidated; or
3. Exceptional or unique circumstances exist that warrant an alternate assignment.

The presiding judicial officer shall notify the Judicial Branch Administrative Office and the

Standing Committee on Indigent Appointments whenever counsel is appointed in derogation of the order set forth in Rule 210.2(a),

(c) Absent a determination by the presiding judicial officer that a case is exceptionally complex, only a single attorney may be appointed to represent a single party.

(d) In cases involving more than one party entitled to court-appointed counsel, the presiding judicial officer may appoint one attorney to represent all parties if circumstances—such as conflicting interests—do not warrant appointment of separate attorneys.

(e) The presiding judicial officer may, by motion of court-appointed private counsel, substitute one court-appointed private counsel for another. The presiding judicial officer reserves the right to reject any substitution which will be contrary to the best interests of the indigent person.

For purposes of payments under Rule 210.4, substitute counsel may not receive compensation for any services rendered prior to the date the motion for substitution is granted, or for any services rendered by original counsel. Likewise, original counsel may not receive compensation for services rendered after the substitution is granted, or for services that were performed by substitute counsel.

(f) Upon request, court-appointed private counsel for a person who is financially unable to obtain investigative, expert, interpretative or other similar services necessary for adequate representation shall request such services in an *ex parte* motion, which counsel may request to be placed under seal. Upon finding, after appropriate inquiry in an *ex parte* proceeding that the services are required in connection with the matter and that the person is financially unable to obtain the services, the presiding judicial officer may authorize counsel to obtain the services in a reasonable amount to be determined by the court.

(g) In an effort to lessen the burden on court-appointed private counsel, the courts of the Virgin Islands shall give calendar preference to cases where private counsel, experts, and interpreters have been appointed under this Rule.

210.3 Private Attorney Panels

(a) The Supreme Court of the Virgin Islands shall establish the following Private Attorney Panels for the courts of the Virgin Islands:

1. Appeals
2. Felonies
3. Misdemeanors
4. Juvenile
5. Guardian Ad Litem
6. Habeas Corpus

The Judicial Branch Administrative Office, with the assistance of the Clerk of the Supreme Court, the Clerk of the Superior Court, and the Standing Committee on Indigent Appointments, shall prepare and maintain the Private Attorney Panels under the supervision of the Chief Justice.

(b) Each Private Attorney Panel shall consist of regularly admitted members of the Virgin Islands Bar who are eligible to practice law in the Virgin Islands and who have consented to provide representation to indigent parties on a recurring basis. In addition to bar membership, volunteer attorneys should have, when applicable, prior relevant experience and knowledge of the Rules of Criminal Procedure, the Rules of Evidence, the Rules of Appellate Procedure, or the Rules of the Family Division.

(c) An attorney may apply for an appointment to a Private Attorney Panel by submitting an application on a form approved by the Chief Justice. An attorney may apply to join one Private Attorney Panel without joining another, and may indicate practice-area or geographic preferences on the application form.

(d) The Chief Justice may add or remove attorneys from each Private Attorney Panel at any time as he or she sees fit, based on the qualifications and availability of those attorneys, including input from the Standing Committee on Indigent Appointments, and subject to review by the entire Supreme Court. The Clerks of the Supreme and Superior Courts shall accept applications and receive recommendations for designation to the Private Attorney Panels, and submit these names to the Standing Committee for evaluation and the Chief Justice for consideration and final approval.

(e) An attorney who has applied for membership on a Private Attorney Panel who does not yet possess sufficient skill, knowledge or experience to undertake certain types of representation (i.e. first-degree murder) may join the panel, but may not receive an appointment to that type of case until and unless the attorney has achieved the appropriate level of competency. In such a case, the Standing Committee on Indigent Appointments shall proscribe a plan for the attorney to obtain the needed competence, which may include formal training or a period of service, without compensation, as second-chair to experienced practitioners.

(f) Any member of a Private Attorney Panel who desires to voluntarily resign from the panel shall submit a written request to the Chief Justice setting forth reasons and justification for such resignation. The Chief Justice may consider whether the resignation will have a detrimental effect on the ability of the court to appoint counsel before allowing the member to resign. A member who receives permission to resign shall not receive further case assignments from the Private Attorney Panel, but shall continue to serve as court-appointed private counsel in all pending cases unless relieved by order of the presiding judicial officer.

(g) Assignment of cases within a Private Attorney Panel shall be made on a rotational basis, taking into account each member's stated geographic and practice-area preferences, except under the circumstances specified in Rule 210.2(b). A member of a Private Attorney Panel may refuse or "pass" an appointment within his or her stated geographic and practice-area preferences when unavailable to assume the case due to scheduling conflicts, workload, or other good cause. Reasons for "passing" appointment shall be given to the presiding judicial officer, and shall be forwarded to the Clerk of the respective court. In the absence of compelling circumstances, "passing" should not be done more than three times during a calendar year. An attorney who has been permitted to withdraw as counsel due to a conflict-of-interest or other permissible ground for

withdrawal shall not be deemed to have “passed” on the case for purposes of this Rule.

210.4 Payment of Appointed Counsel

(a) A private attorney appointed to represent a party under this Rule 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) Court-appointed private counsel may submit an invoice every 90 days during the representation by electronically filing, with the Clerk of the Supreme Court, a claim for compensation and reimbursement, which shall be promptly transmitted to the presiding judicial officer for review. All claims for 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 court. A request for final payment shall be electronically filed no later than 90 days after issuance of final judgment or the date the attorney is granted permission to withdraw as counsel, whichever is earlier.

The Judicial Branch Administrative Office, in collaboration with the Clerk of the Supreme Court and the Standing Committee on Indigent Appointments, may establish deadlines and other guidelines for the filing of quarterly payment requests.

(c) The presiding judicial officer shall, by administrative order, approve or reject, in whole or in part, a claim for compensation and reimbursement by court-appointed private counsel. If the presiding judicial officer rejects, in whole or in part, the payment request, the administrative order shall state the reasons for the rejection. If the presiding judicial officer fails to rule on a claim for compensation and reimbursement within 45 days, it shall be deemed approved in full—except as provided in Rule 210.4(e)—and the Judicial Branch Administrative Office shall promptly issue payment to the court-appointed attorney in accordance with Rule 210.4(g).

(d) Court-appointed private counsel may not be compensated or reimbursed for

1. work performed by, or consultations with, other attorneys, paralegals, administrative assistants, law clerks, investigators, consultants, experts, or other professionals unless court-appointed private counsel sought, and obtained, permission from the presiding judicial officer to utilize such individuals in accordance with Rule 210.2(f);

2. activities adverse to the interests of the client or that are not necessary to providing adequate representation, 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 private counsel’s request for payment;

3. general office overhead, rent, secretarial help, computer-assisted legal research services, normal telephone service, transportation mileage, or items of a personal nature; or

4. travel time or expenses.

(e) Pursuant to 5 V.I.C. § 3503, all payments to court-appointed private counsel must be reasonable. At all times, the burden of establishing that a request for compensation and reimbursement is reasonable remains with court-appointed private counsel. As such, attorneys appointed under this Rule will be held to a high degree of care in the keeping of records supporting all claims for payment. Absent a showing that a matter is unusually complex or novel, claims for total payment exceeding the amounts set forth in “Addendum A” are presumptively unreasonable. Notwithstanding Rule 210.4(c), any claim for payment that would exceed the amounts set forth in “Addendum A” must be approved by the presiding judicial officer. If counsel reasonably believes that it will be necessary to exceed the amounts set forth in “Addendum A,” he or she is encouraged to seek prior written approval from the presiding judicial officer at the earliest opportunity.

(f) The Chief Justice or the Supreme Court may, upon motion of court-appointed private counsel filed within 14 days, review a decision of the presiding judicial officer pursuant to this Rule; however, such motions are disfavored, and limited only to correct a manifest abuse of discretion.

(g) Upon approval by the presiding judicial officer, all approved claims shall be forwarded to the Judicial Branch Administrative Office for payment. In the event a claim for payment has been rejected in its entirety, payment shall not issue until a new request for compensation and reimbursement, curing the deficiencies that resulted in rejection of the previous request, has been submitted and approved. If the presiding judicial officer has partially approved the payment request and counsel has filed a motion for review with the Chief Justice or the Supreme Court, the Administrative Office shall pay the partially approved amount notwithstanding the pendency of the motion.

(h) Any payments authorized by this Rule shall be the sole compensation afforded to a court-appointed 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 shall be referred to the Office of Disciplinary Counsel for further investigation.

(i) Any court-appointed attorney who represents the party in a court outside of the Virgin Islands Judiciary—including, but not limited to, the Supreme Court of the United States, the United States Court of Appeals for the Third Circuit, or the United States District Court of the Virgin Islands—shall be compensated by and pursuant to the rules governing proceedings in those courts.

(j) Neither the Judicial Branch Administrative Office nor any court of the Virgin Islands shall, 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 trial transcripts.

210.5 Standing Committee on Indigent Appointments

(a) The Supreme Court shall create a Standing Committee on Indigent Appointments to assist in overseeing this Rule in the courts of the Virgin Islands. The Standing Committee shall consist of five attorneys, each a voting member, who possess sufficient experience and interest in the local criminal justice system. The voting members of the Standing Committee shall consist of the Chief Territorial Public Defender (or his or her designee), the President of the Virgin Islands Bar Association (or his or her designee), and three additional members, two of whom are appointed by the Chief Justice to staggered three-year terms, and one member appointed by the Presiding Judge to a three-year term. The Administrator of Courts, the Clerks of the Supreme and Superior Courts, the Chief Justice, the Presiding Judge, and the Chair of the Virgin Islands Access to Justice Commission shall be ex-officio, non-voting members of the Standing Committee.

(b) The Standing Committee shall elect a Chair from amongst its voting members, and shall meet formally at least once every six months. The Standing Committee shall:

1. provide to the Chief Justice confidential evaluations of the attorneys who have applied for membership on a Private Attorney Panel; provided, however, that the Chief Justice may act on an application without awaiting such an evaluation if necessary to ensure that each Private Attorney Panel contains sufficient attorneys to provide adequate representation to all litigants eligible for court-appointed counsel;

2. review the statistical data and other reports provided by the Judicial Branch Administrative Office;

3. recommend to the Supreme Court changes to the compensation rates for court-appointed private counsel set forth in “Addendum A” to this Rule;

4. recommend to the Chief Justice, on a confidential basis, whether an attorney should be removed from a Private Attorney Panel due to a lack of competence, excessive “passing” of cases, or other reason that would warrant involuntary removal;

5. provide training, in conjunction with the Office of the Territorial Public Defender and the Virgin Islands Bar Association, on substantive law, procedural rules, and other matters affecting the attorneys who have joined a Private Attorney Panel;

6. assist in promoting the Private Attorney Panels and recruiting qualified attorneys to apply for membership; and

7. identify and define any operating difficulties encountered in the administration of this Rule or the indigent appointment system in the Virgin Islands, and make recommendations to the Chief Justice and the Supreme Court for appropriate changes.

210.6 Forms and Reports

(a) The Judicial Branch Administrative Office shall, in collaboration with the respective Clerk’s Offices of the Supreme Court and the Superior Court, prepare standardized forms, including forms for use by a litigant seeking to proceed *in forma pauperis* and for final payment of court-appointed private counsel, which, upon approval by the Supreme Court, may be used by litigants and attorneys.

(b) The Judicial Branch Administrative Office shall, in collaboration with the respective Clerk’s Offices of the Supreme Court and the Superior Court, maintain a master computer generated list of all appointments under this Rule, which shall include the date of each appointment, the case name, and the name of the attorney (or, if applicable, the Office of the

Territorial Public Defender) appointed, as well as each instance that an attorney elected to “pass” on an appointment, which shall be shared with the Standing Committee on Indigent Appointments. The Administrative Office shall also maintain and share current data on the status of invoices and payment for all court appointments. The Administrative Office shall, on a quarterly basis, submit a report to the Chief Justice, the Presiding Judge, and the Standing Committee reflecting the proration of appointments under this Rule as well as the status of payments to court-appointed private counsel.

Addendum “A”

TABLE TO GOVERN COMPENSATION AND REIMBURSEMENT OF COURT-APPOINTED COUNSEL

MAXIMUM HOURLY RATES (both in-court and out-of-court)	
Felonies	\$100.00
All Others	\$75.00
MAXIMUM PRESUMPTIVELY REASONABLE AGGREGATE PAYMENT (inclusive of all compensation and reimbursement)	
Appeals	\$5,000.00
Felonies	\$15,000.00
Misdemeanors	\$7,500.00
Juvenile	\$10,000.00
Guardian Ad Litem	\$7,500.00
Habeas Corpus	\$5,000.00