

**LOCAL RULES OF CIVIL PROCEDURE
OF THE
DISTRICT COURT OF THE VIRGIN ISLANDS**

Effective July 21, 1992

Amendments effective March 20, 2000

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**LOCAL RULES OF CIVIL PROCEDURE
OF THE
DISTRICT COURT OF THE VIRGIN ISLANDS**

I. Scope of Rules—One Form of Action

Rule 1. SCOPE OF RULES

Rule 1.1. Scope of Rules

(a) TITLE AND CITATION. These Rules shall be known as the Local Rules of Civil Procedure of the District Court of the Virgin Islands of the United States. They shall be cited as "LRCi".

(b) EFFECTIVE DATE. These Rules become effective on July 21, 1992.

(c) SCOPE OF RULES. These Rules shall apply in all proceedings in civil actions. Rules governing proceedings before Magistrate Judges may be found at Rule 72.1.

(d) RELATIONSHIP TO PRIOR RULES; ACTIONS PENDING ON EFFECTIVE DATE. These Rules supersede all previous civil rules promulgated by this court or any judge of this court. They shall govern all applicable proceedings brought in this court after they take effect. They also shall apply to all proceedings pending at the time they take effect, except to the extent that in the opinion of the court the application thereof would not be feasible or would work injustice, in which event the former rules shall govern.

(e) RULE OF CONSTRUCTION AND DEFINITIONS.

(1) United States Code, Title 1, Sections 1 to 5, shall, as far as applicable, govern the construction of these rules.

(2) "appellate rules" as used herein refer to the federal rules of appellate procedure.

(3) "civil rules" as used herein refer to the federal rules of civil procedure.

Rule 1.2. Availability of the Local Rules

Copies of these rules, as amended and with any appendices attached hereto, are available from the clerk of the court's office, for a reasonable charge to be determined by the clerk of the court. Every attorney, upon admission to the bar, will be

provided a copy of the local rules, with appendices, in force at the time of admission.

When amendments to these rules are made, notice of such amendments shall be provided to the bar.

When amendments to these rules are proposed, notice of such proposals and of the ability of the public to comment shall also be provided.

Rule 1.3. Sanctions

The court may sanction for violation of any local rule governing the form of pleadings and other papers filed with the court only by the imposition of a fine against the attorney or a person proceeding pro se. Local rules governing the form of pleadings and other papers filed with the court include, but are not limited to, those local rules regulating the paper size, the number of copies filed with the court, and the requirement of a special designation in the caption.

Rule 2. ONE FORM OF ACTION

II. Commencement of Action; Service of Process, Pleadings, Motions, and Orders

Rule 3. COMMENCEMENT OF ACTION

Rule 3.1. Civil Cover Sheet

Every complaint or other document initiating a civil action shall be accompanied by a completed civil cover sheet on a form available from the clerk of the court. This requirement is solely for administrative purposes, and matters appearing only in the civil cover sheet have no legal effect in the action.

If the complaint or other document is filed without a completed civil cover sheet, the clerk of the court shall mark the document as to the date received and promptly give notice of the omission to the party filing the document. When the civil cover sheet has been completed, the clerk of the court shall file the complaint or other document nunc pro tunc as of the date of the original receipt.

Persons filing civil cases pro se are exempt from the foregoing requirements.

Rule 3.2. Mediation

(a) "Mediation" means a process whereby a neutral third person called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties. It is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. In mediation, decision making authority rests with the parties. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem-solving and exploring settlement alternatives.

(b) (1) Referral by Magistrate Judge or Presiding Judge.

Except as hereinafter provided, the Magistrate Judge or Presiding Judge may hereafter order any contested civil matter or selected issue to be referred to mediation. Pending promulgation of the revised Local Rules of Appellate Procedure of the District Court, Local Rule 3.2 shall also be applicable to cases in the Appellate Division.

(A) Conference or Hearing Date. Unless otherwise ordered by the court, the first mediation conference shall be held within sixty (60) days of the order of referral.

(B) Role of Counsel. Unless otherwise ordered by the court, counsel to the parties shall attend and participate in the mediation conference. The role of counsel shall be limited to general consultation pursuant to the rules governing the attorney-client privilege.

(C) Notice. Within 10 (ten) days after the order of referral, the court or its designee, who may be the mediator, shall notify the parties in writing of the date, time, and place of the conference.

(D) A mediator is authorized to change the date and time for the mediation conference, provided the conference takes place within fifteen (15) days of the date set forth in (1)(A). Any continuance of the conference beyond this fifteen- (15-) day period must be approved by the judge to whom the case is assigned.

(E) The mediation conference shall take place in a courtroom designated by the court or any other place designated by the court.

(2) *Motion to Dispense with Mediation.*

A party may move, within fifteen (15) days after the order of referral, to dispense with mediation if:

- (A) The issue to be considered has been previously mediated between the same parties;
- (B) The issue presents a question of law only;
- (C) Other good cause is shown.

(3) *Selection of Mediator.*

(A) Certification of Mediators. The court shall certify as many mediators as it determines to be necessary.

(B) Each individual certified as a mediator shall take the oath or affirmation prescribed by Title 28 U.S.C. Section 453 before serving as a mediator.

(C) A list of all persons certified as mediators shall be maintained with the court.

(c) (1)

The mediator has a duty to define and describe the process of mediation and its costs during an orientation session with the parties before the mediation conference begins. The orientation should include the following:

- (A) Mediation procedures;
- (B) The differences between mediation and other forms of conflict resolution, including therapy and counseling;
- (C) The circumstances under which the mediator may meet alone with either of the parties or with any other person;
- (D) The confidentiality provision as provided for by Title 5, Section 854 of the Virgin Islands Code;
- (E) The duties and responsibilities of the mediator and the parties;
- (F) The fact that any agreement reached must be reached by mutual consent of the parties;

(G) The information necessary for defining the disputed issues.

(2) The mediator has a duty to be impartial, and to advise all parties of any circumstances bearing on the mediator's possible bias, prejudice or lack of impartiality. Any person selected as a mediator shall be disqualified for bias, prejudice or impartiality as provided for by Title 28 U.S.C. Section 144 and shall disqualify him/herself in any action in which he/she would be required under Title 28 U.S.C. Section 455 to disqualify him/herself if he/she were a judge or Magistrate Judge.

(3) A mediator appointed by the court pursuant to these rules shall have judicial immunity in the same manner and to the same extent as a judge.

(4) *Disqualification of a Mediator.*

Any party may move the court to enter an order disqualifying a mediator for good cause. Mediators have a duty to disclose any fact bearing on their qualifications which would be grounds for disqualification. If the court rules that a mediator is disqualified from hearing a case, an order shall be entered setting forth the name of a qualified replacement. Nothing in this provision shall preclude mediators from disqualifying themselves or refusing any assignment. The time for mediation shall be tolled during any periods in which a motion to disqualify is pending.

(d) (1) *Completion of Mediation.* Mediation shall be completed within forty-five (45) days of the first mediation conference unless extended by order of the court or by stipulation of the parties, but in any event the process shall not exceed ninety (90) calendar days.

(2) *Exclusions from Mediation.* The following actions shall not be referred to mediation:

- (A) Criminal actions;
- (B) Appeals from rulings of administrative agencies;
- (C) Forfeitures of seized property;
- (D) *Habeas corpus* and extraordinary writ;

(E) Declaratory relief;

(F) Any case assigned by the court to a multidistrict tribunal;

(G) Any litigation expedited by statute or rule; or,

(H) Other matters as may be specified by order of a judge in the district.

(3) *Discovery*. Discovery may continue throughout mediation. Such discovery may be delayed or deferred upon agreement of the parties or by order of the court.

(4) *Disclosure Privilege*. Each party involved in a court-ordered mediation conference has a privilege to refuse to disclose, and to prevent any person present at the proceeding from disclosing communications made during such proceeding.

(5) *Inadmissibility of Mediation Proceedings*. Any or all communications, written or oral, made in the course of a mediation proceeding, other than an executed settlement agreement, shall be inadmissible as evidence in any subsequent legal proceeding, unless all parties agree otherwise.

(e) (1) *Interim or Emergency Relief*. A mediator may apply to the court for interim or emergency relief at any time, at the initiation of the mediator upon consultation with the parties, or at the parties' request. Mediation shall continue while such a motion is pending absent a contrary order of the court or a decision of the mediator to adjourn pending disposition of the motion. Time for completing mediation shall be tolled during any periods where mediation is interrupted pending resolution of such a motion.

(2) *Sanctions for Failure to Appear*. If a party, without good cause, fails to appear at a duly noticed mediation conference or fails to participate in the mediation in good faith, the court shall impose sanctions, including an award of mediator and attorney fees and other costs against the party failing to appear or found not to have mediated in good faith. If, in the opinion of the mediator, a party has not participated in the mediation in good faith, and notwithstanding any other provisions of this rule, the mediator shall notify the referring judge in writing who shall make such further proceedings as appropriate to resolve the issue. If a party to mediation is a public entity, that party shall be deemed to

appear at a mediation conference by the physical presence of a representative with full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision making body of the entity. Otherwise, unless stipulated by the parties, a party is deemed to appear at a mediation conference if the following persons are physically present:

(A) The party or its representative having full authority to settle without further consultation; and,

(B) A representative of the insurance carrier for any insured party who is not such carrier's outside counsel and who has full authority to settle without further consultation.

(3) *Adjournments.* The mediator may adjourn the mediation conference at any time and may set a date and a time for reconvening the adjourned conference, provided the mediation conference takes place within fifteen (15) days of the original date set for the conference. Any continuance beyond this fifteen- (15-) day period must be approved by the presiding judge to whom the case is assigned. No further notification is required for parties present at the adjourned conference.

(4) *Role of Counsel.* Mediation will proceed in the absence of counsel, unless otherwise ordered by the court. Counsel shall only be permitted to communicate privately with their clients, when the parties are not attending scheduled mediation proceedings.

(5) *Communication with Parties.* The mediator may meet and consult with the parties or their counsel, on any issue pertaining to the subject matter of the mediation. Should the mediator wish to discuss a matter with the parties or their counsel, the mediator must inform all parties to the mediation of the location and subject matter of such meeting. The mediator can consult with any party or their counsel, only upon agreement of all parties. The mediator shall keep a written record of any and all meetings conducted with the parties or their counsel, and such record shall be made available to the parties.

(6) *Appointment of the Mediator.*

(A) Within ten (10) days of the order of referral, the parties may agree upon a stipulation with the court designating:

(i) A certified mediator; or

(ii) A mediator who does not meet the certification requirements of the rules but who, in the opinion of the parties and upon review by the presiding judge, is otherwise qualified by training or experience to mediate all or some of the issues in the particular case.

(B) If the parties cannot agree upon a mediator within ten (10) days of the order of referral, the plaintiff or petitioner shall so notify the court within ten (10) days of the expiration of the period to agree on a mediator, and the court shall appoint a certified mediator selected by rotation or by such other procedures as may be adopted by administrative order of the court.

(7) *Compensation of the Mediator.* The mediator shall be compensated by the parties. The presiding judge may determine the reasonableness of the fees charged by the mediator. In the absence of a written agreement providing for the mediator's compensation, the mediator shall be compensated at the hourly rate set by the presiding judge in the referral order. Each party shall pay one-half or such other proportionate share of the total charges of the mediator as may be agreed upon, unless the mediator and/or the court determines that one party has not mediated in good faith.

(f) (1) *No Agreement.* If the parties do not reach any agreement as to any matter as a result of mediation, or if the mediator determines that no settlement is likely to result from the mediation, the mediator shall report the lack of an agreement to the court without comment or recommendation. With the consent of the parties, the mediator's report may also identify any pending motions or outstanding legal issues, discovery process, or other action by any party which, if resolved or completed, would facilitate the possibility of a settlement.

(2) *Agreement.* If an agreement is reached, it shall be reduced to writing and signed by the parties and their counsel, if any. The agreement shall be filed when required by law or with the parties' consent. If the

agreement is not filed, a joint stipulation of dismissal shall be filed. By stipulation of the parties, the agreement may be electronically or stenographically recorded. In such event, the transcript may be filed with the court.

(3) *Imposition of Sanctions.* In the event of any breach or failure to perform under the agreement, the court upon motion may impose sanctions, including costs, attorney fees, or other appropriate remedies including entry of judgment on the agreement.

(g) (1) *Certification of Mediators.* For certification, a mediator:

(A) Must complete a minimum of twenty (20) hours in a training program approved by the District Court; and,

(B) Must observe a minimum of four district or other mediation conferences conducted by a certified mediator and conduct four district court mediation conferences under the supervision and observation of a court certified mediator;

(C) Standing: A mediator must also meet one of the following minimal requirements:

(i) The mediator may be a member in good standing of the Virgin Islands Bar with at least five years of Virgin Islands practice, and be an active member of the Virgin Islands Bar within one year of application for certification; or,

(ii) Paragraph (I) notwithstanding, the chief judge, upon written request setting forth reasonable and sufficient grounds, may certify as a District court mediator a retired judge who was a member of the bar in the state or Territory in which the judge presided. The judge must have been a member in good standing of the bar of another state for at least five years immediately preceding the year certification is sought and must meet the training requirements of subsection (g) (1) (A); or,

(iii) The mediator may be the holder of a master's degree and be a member in good standing in his or

her professional field with at least five (5) years of practice in the Virgin Islands; and,

(D) Notwithstanding the foregoing procedures which are the preferred method of certification, the court may, in the absence of an available pool of certified mediators, appoint as a mediator a qualified person acceptable to the court and the parties. Also, a person certified as a mediator by the American Arbitration Association, or any other national organization approved by the District Court shall be deemed to qualify under this section as a District Court Mediator.

Rule 4. PROCESS

Rule 5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

Rule 5.1. General Format of Papers Presented for Filing

All pleadings, motions, and other papers presented for filing shall be on 8-1/2 x 11-inch white paper of good quality, flat and unfolded, and shall be plainly typewritten, printed, or prepared by a clearly legible duplication process, and double-spaced, except for quoted material. Each page shall be numbered consecutively.

This rule does not apply to: (1) exhibits submitted for filing; and, (2) documents filed in removed actions prior to removal from the state courts.

The use of recycled paper in all correspondence, pleadings and motions is encouraged.

Rule 5.2. Appearances

(a) The attorney for each party in any cause shall promptly file an appearance in the office of the clerk of the court, giving his address in the Virgin Islands where all notices and papers may be served upon him.

(b) No attorney may withdraw his appearance except with leave of court after notice to his client.

Rule 5.3. Court Service to Attorneys Through Clerk's Office Boxes

Attorneys in active practice in the district court have assigned boxes in the clerk's office for service by the court of orders and other communications. It is the duty of counsel to check their boxes sufficiently often to ensure that they receive timely notice

of such orders and other notices. This rule applies to all aspects of practice in the district court admiralty, civil and criminal cases.

Rule 6. TIME

Rule 6.1 Computation of Time

As used in Fed. R. Civ. P. 6(a) and 77(c) "legal holiday" includes New Year's Day, Martin Luther King's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Christmas Day and any other day appointed as a holiday by the President or Congress of the United States, or by the Territory of the Virgin Islands. Virgin Islands holidays shall include those enumerated in 1 V.I.C. § 171(a) and any day on which the District Court of the Virgin Islands is closed.

(Added March 3, 2000, eff. March 20, 2000).

HISTORY

AMENDMENTS-2000. Added upon recommendation of the Lawyer's Advisory Group.

III. Pleadings and Motions

Rule 7. PLEADINGS ALLOWED; FORM OF MOTIONS

Rule 7.1. Motion Practice

(a) MOTIONS SHALL BE IN WRITING. All motions, including objections to interrogatories and requests for admissions, unless made during a hearing or trial, shall be in writing.

(b) GROUNDS FOR MOTIONS. All motions shall state with particularity the grounds therefor, and shall set forth the relief or order sought.

(c) SIGNING OF MOTIONS. Every motion shall be signed by at least one attorney of record in his/her individual name (local counsel; see LRCi 83.1(3)). The signature of an attorney constitutes a certificate by him/her that he/she has read the motion; that to the best of his/her knowledge, information and belief there are good grounds to support it; and that it is not interposed for delay.

(d) DOCUMENTS SUPPORTING MOTIONS. When allegations of facts not appearing of record are relied upon in support of a motion, all

affidavits and other pertinent documents then available shall be filed before the hearing of the motion.

(e) BRIEF SUPPORTING MOTIONS. Motions shall be accompanied by a brief which shall contain a concise statement of reasons in the support of the motions and citation of authorities upon which the movant relies.

(f) RESPONSE AND BRIEF. If the respondent opposes a motion, he shall file his response, including brief and such supporting documents as are then available, within ten (10) days after service of the motion. The time period for any response and reply to a dispositive motion filed under Civil Rule 12(b) and © shall be as provided in LRCi 56.1. Briefs shall contain a concise statement of reasons in opposition to the motion and a citation of authorities upon which the respondent relies. For good cause appearing therefor, a respondent may be required to file his response and supporting documents, including brief, within such shorter period of time as the court may specify, or may be given additional time upon request made to the court.

(g) MOTION, RESPONSE AND REPLY. Only a motion, a response in opposition, and a reply may be served on counsel and filed with the court; further response or reply may be made only by leave of court obtained before filing (counsel will be sanctioned for violation of this limitation).

(h) SERVICE OF MOTION AND RESPONSE. The movant and respondent shall serve copies of their respective papers upon opposing counsel before they are filed with the clerk of the court, and such papers must indicate the date and method of service.

(i) REQUEST FOR ORAL ARGUMENT. Oral argument may be set on written notice therefor, or the court may, in its discretion, order oral arguments on any motion. A request for oral argument shall be separately stated by the movant or respondent at the conclusion of the motion or response.

(j) FAILURE TO FILE AND SERVE MOTION PAPERS. Upon failure of movant to file a brief in support of the motion, the court may automatically deny the motion for failure to conform to subsection (e). Upon failure of respondent to file a response and brief in opposition to the motion, the court may treat the motion as conceded and render whatever relief is asked for in the motion.

Rule 7.2. When Motions and Cases Will Be Set Down for Hearing

(a) No motion shall be set for hearing until and unless the motion, objections to the motion and all supporting briefs and documents have been filed with the court. Motions filed which are not in conformity with this rule shall not be entertained by the court.

(b) The attorney bringing or responding to any motion, petition, objection or case may request oral argument. The court, in its discretion, may set the matter for hearing or decide it on the documents.

Rule 7.3. Motions *in Limine*.

All motions *in limine* shall be filed no later than twenty-one (21) days before the days scheduled for jury selection, absent good cause shown to the district judge upon a timely written motion to file out of time.

(As amended March 3, 2000, eff. March 20, 2000).

HISTORY

AMENDMENTS-2000. Amended by deleting fourteen (14) days and substituting twenty-one (21) days.

Rule 7.4 Motions for Reconsideration

A party may file a motion asking a judge or magistrate judge to reconsider an order or decision made by that judge or magistrate judge. Such motion shall be filed within ten (10) days after the entry of the order or decision unless the time is extended by the court. Extensions will only be granted for good cause shown. A motion to reconsider shall be based on:

1. intervening change in controlling law;
2. availability of new evidence, or;
3. the need to correct clear error or prevent manifest injustice.

(Added March 3, 2000, eff. March 20, 2000).

HISTORY

AMENDMENTS-2000. Added upon recommendation of the Lawyer's Advisory Group.

Rule 8. GENERAL RULES OF PLEADING

Rule 9. PLEADING SPECIAL MATTERS

Rule 9.1. Social Security Number in Social Security Cases

Any person seeking judicial review of a decision of the Secretary of Health and Human Services under Section 205(g) of the Social Security Act [42 U.S.C. Sec. 405(g)] shall provide, on a separate paper attached to the complaint served on the Secretary of Health and Human Services, the social security number of the worker on whose wage record the application for benefits was filed. The person shall also state, in the complaint, that the social security number has been attached to the copy of the complaint served on the Secretary of Health and Human Services. Failure to provide a social security number to the Secretary of Health and Human Services will not be grounds for dismissal of the complaint.-Adopted July 20, 1992, eff. July 21, 1992.

Rule 10. FORM OF PLEADINGS

Rule 11. SIGNING OF PLEADINGS, MOTIONS, AND OTHER PAPERS;
SANCTIONS

Rule 11.1. Motions to Withdraw as Counsel

All motions for withdrawal as counsel should include a verified statement as to contact with or attempts to contact the client concerning such withdrawal; and an indication of service upon or efforts to serve the client with the moving papers. The proposed order submitted should include the following:

--allowing withdrawal

--providing for stay of a reasonable number of days to allow the client to obtain new counsel

--providing for service on client of order allowing withdrawal by withdrawing counsel and the filing of proof thereof.-Adopted July 20, 1992, eff. July 21, 1992.

Rule 11.2. Citation of Authority

By signing a pleading, an attorney certifies to the court that:

(a) the applicable law in this jurisdiction has been cited, including authority for and against the position being advocated by counsel;

(b) all applicable law in this jurisdiction has been presented before law from another jurisdiction is cited. Counsel shall attach to the pleading a copy of any foreign law relied upon

therein unless that authority is available in the court's library.

Rule 12. DEFENSES AND OBJECTIONS -- WHEN AND HOW PRESENTED -- BY PLEADINGS OR MOTION -- MOTION FOR JUDGMENT ON PLEADINGS

Rule 12.1 Dispositive Motions Pursuant to Rule 12

The procedure set out in LRCi 56.1 (a)-(c) and any amendments thereto shall be applicable to all dispositive motions filed pursuant to Fed. R. Civ. P. 12.

(Added March 3, 2000, eff. March 20, 2000).

HISTORY

AMENDMENTS-2000. Added upon recommendation of the Lawyer's Advisory Group.

Rule 13. COUNTER-CLAIM AND CROSS-CLAIM

Rule 14. THIRD-PARTY PRACTICE

Rule 15. AMENDED AND SUPPLEMENTAL PLEADINGS

Rule 15.1. Form of a Motion to Amend and its Supporting Documentation

A party who moves to amend a pleading shall attach the original of the amendment, and one copy, to the motion. Any amendment to a pleading, whether filed as a matter of course or upon a motion to amend, must, except by leave of court, reproduce the entire pleading as amended specifically delineating the changes or additions and may not incorporate any prior pleading by reference. A proffered amended pleading must note prominently on the first page the numbered amendment it represents; i.e., 1st, 2nd, 3rd amendment, etc. A failure to comply with this rule is not grounds for denial of the motion.-Adopted July 20, 1992, eff. July 21, 1992.

Rule 16. PRETRIAL CONFERENCES; SCHEDULING; MANAGEMENT

Rule 16.1. Pretrial Procedure

(a) DISCOVERY MEMORANDUM. All parties shall conduct discovery expeditiously and diligently. No less than three (3) days prior to the initial scheduling conference held pursuant to Rule 16 of the Civil Rules, each party shall submit to the Magistrate Judge

conducting the initial scheduling conference and serve on all other parties a discovery memorandum which shall include, but need not be limited to, the following items:

(1) a brief factual statement of the claims or defenses in the action and of the legal issues in the case;

(2) a description of all discovery conducted by the party to date;

(3) a description of all discovery problems encountered to date, the efforts undertaken by the party to remedy these problems, and the party's suggested resolution of the problems;

(4) a description of the party's further discovery needs;

(5) the party's estimate of the time needed to complete discovery;

(6) a statement regarding whether expert testimony will be necessary, and the party's anticipated schedule for retention of experts and submission of their reports;

(7) a statement regarding whether there should be any limitation placed upon use of any discovery device and, if so, the reason the limitation is sought;

(8) a description of any special discovery needs of the party (e.g., videotape, telephone depositions, or problems with off-island witnesses or documents, etc.).

(b) SCHEDULING ORDER. At the initial scheduling conference held pursuant to Rule 16 of the Civil Rules, the Magistrate Judge shall enter a scheduling order setting a date for the completion of discovery, including the time within which experts must be identified and their reports exchanged. The Magistrate Judge may further include in the scheduling order any limitations on the scope, method or order of discovery as may be warranted by the circumstances of the particular case to avoid duplication, harassment, delay, or needless expenditure of costs. In entering a scheduling order as provided by this Rule, the Magistrate Judge may take into account any party's prior lack of diligence in conducting discovery in the case. The scheduling order may be amended only for good cause shown upon timely application, see Rule 16(b) of the Civil Rules.

(c) JOINT FINAL PRETRIAL ORDER.

(1) *Procedure.* The proposed Joint Final Pretrial Order shall be prepared through cooperation of counsel within the deadlines and in accordance with instructions given by the court. After each counsel has submitted the respective portions of the proposed pretrial order to other counsel, plaintiff's counsel shall convene a conference, in person or by telephone, to attempt to reconcile any matters on which there is a disagreement. After diligent efforts to resolve such disagreements, all areas of agreement or disagreement shall be noted in the proposed Joint Final Pretrial Order. The proposed Order shall be a single document reflecting efforts of all counsel, signed by all counsel of record, and then submitted by plaintiff's counsel (original plus one copy for each attorney or unrepresented litigant) to the Magistrate Judge for review and entry. Once entered, the Joint Final Pretrial Order, including lists of witnesses and exhibits, shall not be amended except to prevent manifest injustice, see Rule 16(e) of the Civil Rules. The court will enforce the provisions and requirements of the Joint Final Pretrial Order by sanctions against counsel or the parties, as appropriate under Rule 37 of the Civil Rules.

(2) *Format.* In all civil cases, unless otherwise ordered by the court, the Joint Final Pretrial Order shall be prepared and submitted in accordance with the format attached hereto as Appendix I.

(d) TRIAL BRIEFS, REQUESTS TO CHARGE, PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW. No later than six (6) days before the date set for trial or at such time as the court may direct:

(1) Each party shall submit to the Judge and to opposing counsel a trial brief or memorandum with citations and authorities and arguments in support of the party's position on all disputed issues of law.

(2) In a jury case, each party shall also submit to the Judge, with a copy to opposing counsel, written requests for charge to the jury. Supplemental requests for charge may be submitted at any time prior to the arguments to the jury. All requests for charge must be plainly marked with the name and number of the case; shall contain citations of supporting authorities if any; shall designate the party submitting the same; and in the case of multiple requests by a party, shall be numbered in sequence.

(3) In a non-jury case, the litigants will be required to deliver proposed Findings of Fact and Conclusions of Law to the court.-Adopted July 20, 1992, eff. July 21, 1992; amended Feb. 8, 1996, eff. Feb. 19, 1996.

Appendix I to Rule 16.1

Instructions:

[Please re-type completely.]

DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN
DIVISION OF ST. CROIX

Plaintiff(s),

Civil Action No.

v.

(Jury Trial or
Non-Jury Trial)

Defendant(s).

JOINT FINAL PRETRIAL ORDER

[Please retype the following statement]:

The following shall constitute the Final Pretrial Order pursuant to Rule 16(e) of the Federal Rules of Civil Procedure and this Final Pretrial Order shall govern the conduct of the trial of this case. Amendments to this order will be allowed only in exceptional circumstances to prevent manifest injustice.

APPEARANCES:

[The names, addresses and telephone numbers of trial counsel shall be listed for each party and the identity of the party (or parties) represented should be clearly stated.]

1. *Nature of the Action and Jurisdiction of the Court:* [Also include a short, plain statement of the case.]

2. *Factual Contentions of Plaintiff(s):* [Insert Name(s)] [Give all relevant facts, using separate sheet as a "rider" if necessary.]

3. *Factual Contentions of Defendant(s):* [Insert Name(s)] [Give all relevant facts using separate sheet as a "rider" if necessary.]

4. *Factual Contentions of Defendant/Third-Party Plaintiff(s):* [Insert Name(s)] [If not applicable, delete and renumber balance of order.]

5. *Factual Contentions of Third-Party Defendant(s)*: [Insert Name(s)] [If not applicable, delete and renumber balance of order.]

6. *Admissions and Stipulations*: [Number each admission and stipulation separately. Plaintiff's counsel shall propose a reasonably full set of stipulations for defense consideration. Only the stipulations that are agreed to by all litigants may appear in the Final Order.]

7. *Statement of Damages*: [In every case, the statement of damages must be itemized and specific. In personal injury actions the medical specials, and any wage or other losses, should be itemized along with the nature, extent and duration of any alleged injuries. If monetary damages are not sought, the type of relief should be described.]

8. *Amendments to the Pleadings*: [Unless leave of court has been obtained to amend the pleadings, the Final Pretrial Order shall contain the statement: "No amendments to the pleadings shall be made."]

9. *Statement of Legal Issues Presented*: [Each party shall state the legal issues arising in its claim and/or defense.]

10. *Legal Issues, Defenses or Claims to Be Abandoned*: [Counsel should make efforts to eliminate claims and defenses that are not supported by the facts. Please see Rule 11, Fed.R.Civ.P.]

11. *Exhibits*: [Each party shall list separately and describe with particularity each exhibit which it intends to use at the trial of this case. Any exhibit not listed may not be used as direct evidence, unless the existence of the exhibit despite due diligence was unknown to the party and its counsel at the time of submission of this order. This list shall be seasonably supplemented upon the discovery of a new exhibit. Each party shall separately attach its Exhibit List in the format of the EXHIBITS form attached hereto; that listing shall serve as the party's Exhibit List at trial. If a party intends to use no exhibits at trial for any purpose, the party's Exhibit List shall so state. Exhibits should be premarked prior to trial in accordance with the Exhibit List.]

12. *Additional Discovery*: [Unless leave of court has been obtained to extend pretrial discovery, and it is so noted in the Final Pretrial Order, this order shall contain the statement: "All discovery is complete." No further discovery may be propounded, and each party shall answer any overdue discovery immediately.]

13. *Expert Witnesses*: [For each party, the names of expert witnesses should be listed. Any party who intends to advance expert opinion testimony must furnish opposing counsel with the proposed expert's report, which is a written statement of all the information required by Fed. R. Civ. P. 26(b)(4), together with a curriculum vitae of the proposed expert prior to the entry of this order. Reference should be made to any prior order controlling the terms and conditions of experts' reports and testimony.]

14. *Non-Expert Witnesses*: [The name of each fact witness whom the party intends to call at trial shall be listed. Persons whose names appear on another party's list need not be listed again. No party shall call a witness at trial whose name does not appear on a witness list unless the existence of the potential witness was unknown to the party, despite due diligence, at the time of submission of this order. Upon the discovery of a new witness, the name of such witness shall be seasonably supplied to all parties.]

15. *Special Problems*: [Please state in detail any other special problems which require the court's attention at the Final Pretrial Conference.]

16. *Estimated Length of Trial*: [Please indicate whether JURY or NON-JURY.] [Please give total estimated length of this trial. Assume that the trial is not bifurcated. If a hearing is required on any preliminary matter, please discuss this here.]

17. *Trial Briefs and Requests to Charge*: [The following is to be retyped and set forth by counsel in this portion of the order:] No later than six (6) days before the date set for trial or at such time as the court may direct:

(a) Each party shall submit to the judge and to opposing counsel a trial brief or memorandum with citations and authorities and arguments in support of the party's position on all disputed issues of law.

(b) In a jury case each party shall also submit to the judge, with a copy to opposing counsel, written requests for charge to the jury. Supplemental requests for charge may be submitted any time prior to the arguments to the jury. All requests for charge shall be plainly marked with the name and number of the case; shall contain citations of supporting authorities, if any; shall designate the party submitting the same; and in the case of multiple requests by a party, shall be numbered in sequence.

(c) If this is a non-jury case, the litigants will be required to deliver proposed Findings of Fact and Conclusions of Law to the court.

Concluding Certification

[The following statement and signature blocks are to be retyped and appear at the conclusion of every Joint Final Pretrial Order immediately above counsels' signatures as illustrated below.]

We hereby certify by the affixing of our signatures to the Joint Final Pretrial Order that it reflects the efforts of all counsel and that we have carefully and completely reviewed all parts of this order prior to its submission to the court. Further, it is acknowledged that amendments to this Pretrial Order will not be permitted except where the court determines that manifest injustice would result if the amendment is not allowed.

Attorney(s) for Plaintiff(s):*
Defendant(s):*

Attorney(s) for

Entry of the foregoing Joint Final Pretrial Order is hereby APPROVED this _____ day of _____, _____
(Month) (Year)

Adopted July 20, 1992, eff. July 21, 1992.

* Please note that all counsel of record must sign this pleading. A proposed Final Pretrial Order not personally signed by the party (if pro se) or by an attorney who is a member of the District Court of the Virgin Islands is unacceptable.

Rule 16.2. Scheduling Orders Required by Rule 16 Fed. R. Civ. P.

(a) The Magistrate Judge will hold a preliminary conference approximately sixty (60) days after the filing of each civil case. At this conference, counsel should be fully prepared to discuss any questions regarding the case, including issues raised by the pleadings, pending motions, motions that will be filed, additional

parties that will be joined, the probable length of time needed for discovery, and the possibility of settlement of the case.

(b) At the preliminary conference, dates will be set for completing pleadings, filing motions, completing discovery, holding a final pretrial conference, and for trial. The final pretrial conference will be scheduled to be held approximately ten to fifteen (10-15) days before the trial date.

(c) The final pretrial conference must be attended by counsel who will be trial counsel for each party.

(d) At the conclusion of the final pretrial conference, an appropriate order will be entered reflecting the action taken at the conference and the trial date will be confirmed. Once the trial date has been thus set with the concurrence of counsel, no continuance will be granted except for good cause shown.-Adopted July 20, 1992; eff. July 21, 1992.

IV. Parties

Rule 17. PARTIES PLAINTIFF AND DEFENDANT; CAPACITY

Rule 18. JOINDER OF CLAIMS AND REMEDIES

Rule 19. JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION

Rule 20. PERMISSIVE JOINDER OF PARTIES

Rule 21. MISJOINDER AND NON-JOINDER OF PARTIES

Rule 22. INTERPLEADER

Rule 23. CLASS ACTIONS

Rule 23.1. DERIVATIVE ACTIONS BY SHAREHOLDERS

Rule 23.2. ACTIONS RELATING TO UNINCORPORATED ASSOCIATIONS

Rule 23.3. Designation of "Class Action" in the Caption

In any case sought to be maintained as a class action, the complaint, or other pleading asserting a class action, shall include next to its caption, the legend "Class Action." -- Adopted July 20, 1992, eff. July 21, 1992.

Rule 24. INTERVENTION

Rule 24.1. Procedure for Notification of Any Claim of Unconstitutionality

(a) In any action, suit, or proceeding in which the United States or any agency, office, or employee thereof is not a party and in which the constitutionality of an Act of Congress affecting the public interest is drawn in question, or in any action, suit, or proceeding in which the Territory or any agency, officer, or employee thereof is not a party, and in which the constitutionality of any statute of that State affecting the public interest is drawn in question, the party raising the constitutional issue shall notify the court of the existence of the question either by checking the appropriate box on the Civil Cover Sheet or by stating on the pleading that alleges the unconstitutionality, immediately following the title of that pleading, "Claim of Unconstitutionality" or the equivalent.

(b) Failure to comply with this rule will not be grounds for waiving the constitutional issue or for waiving any other rights the party may have. Any notice provided under this rule, or lack of notice, will not serve as a substitute for, or as a waiver of, any pleading requirement set forth in the Civil Rules or statutes-Adopted July 20, 1992, eff. July 21, 1992.

Rule 25. SUBSTITUTION OF PARTIES

V. Depositions and Discovery

Rule 26. GENERAL PROVISIONS GOVERNING DISCOVERY

Rule 26.1. General Provisions, Document Production

All documents in any litigation required to be filed with the court shall be filed pursuant to Federal Rules Civil Procedure, Rule 5 with the following exceptions:

Document production and interrogatory responses.

In responding to the a request for document production and in responding to written interrogatories, the party producing the documents or responding to the interrogatories shall not file any of the documents or the interrogatory responses with the court. Instead, the party shall file a document indicating the nature of the documents which are being produced in response to each request. Regarding interrogatory responses, the responding party shall file a notice indicating the date of response and service. Should any party file the actual documents or responses to the interrogatories

with the Clerk of the Court, the clerk shall return those documents or responses to the interrogatories to the party in question unless a motion to so file has previously been granted by the court.

(As amended March 3, 2000, eff. March 20, 2000).

HISTORY

AMENDMENTS-2000. Amended by addition of language concerning interrogatory responses.

Rule 26.2. Time and Participation Limits; Cooperative Discovery

(a) DEPOSITIONS. Time and participation limits:

(1) One hour for the direct examination and one hour for cross-examination per party of non-party witnesses; and three hours direct for party and expert witnesses and an equal amount of time for each party for cross-examination, except as extended by stipulation of the parties or upon order of the court.

(2) No more than one attorney for each party may question the deponent, except as extended by stipulation of the parties or upon order of the court.

(b) COOPERATIVE DISCOVERY DEVICES.

(1) Cooperative discovery arrangements in the interest of reducing delay and expenses are encouraged.

(2) The parties may, by stipulation, extend the scope of the obligation for self-executing discovery in (c) below.

(c) DISCOVERY DUTY OF SELF-EXECUTING DISCLOSURE.

(1) *Required Disclosures.*

(A) Unless otherwise produced or disclosed or unless otherwise directed by the court each party shall, without awaiting a discovery request, disclose, produce or make available for inspection to all other parties:

(i) The name and last known address of each person reasonably likely to have information that bears significantly on the claims and defenses, identifying the subjects of the information;

(ii) A general description, including location, of all documents, data, compilations, the existence and contents of medical records, claims, and tangible things in the possession, custody, or control of that party that are likely to bear significantly on the claims and defenses;

(iii) The existence and contents of any insurance agreement under which any person or entity carrying on an insurance business may be liable to satisfy part or all of the judgment that may be entered in the action, or indemnify or reimburse for payment made to satisfy the judgment, making available such agreement for inspection and copying, as well as reports or documents bearing on reservation of rights or denial of coverage;

(iv) Unless the court otherwise directs, these disclosures shall be made (1) by each plaintiff within ninety (90) days after service of an answer to its complaint; (2) by each defendant within ninety (90) days after serving its answer to the complaint; and, in any event; (3) by any party that has appeared in the case within ninety (90) days after receiving from another party a written demand for early disclosure. A party is not excused from disclosure because it has not fully completed its investigation of the case, or because it challenges the sufficiency of another party's disclosure, or, except with respect to the obligation under clause (3), because another party has not made its disclosures.

(2) *Supplementation of Disclosures.* A party who has made a disclosure under (c)(1) is under a duty to reasonably supplement or correct its disclosures if the party obtains information on the basis of which it knows that the information disclosed was either incomplete or incorrect when made, or is no longer complete or true.

(3) *Signing of Disclosures.* Every disclosure or supplement made pursuant to subdivision (a) or (c) by a party represented by an attorney shall be signed by at least one attorney of record (local counsel; see LRCi 83.1(3)) and the party. A party who is not represented by an attorney shall sign the disclosure. The signature of the attorney or party constitutes the certification under, and is consequently governed by, the provisions of the Civil Rules, and, in addition, constitutes a certification that the signer has read the disclosure, and to the best of the signer's knowledge, information, and belief,

formed after reasonable inquiry, the disclosure is complete as of the time it was made.

(4) *Duplicative Disclosure*. At the time the duty to disclose arises, it may cover matters already fully disclosed in the same civil action pursuant to an order of the court, to a requirement of law or otherwise. In that event, duplicative disclosure is not required, and a statement that disclosure has already been made discharges the obligation imposed under this section. -Adopted July 20, 1992, eff. July 21, 1992; amended Feb. 8, 1996, eff. Feb. 19, 1996.

Rule 26.3. Expert Witness -- Written Report; Video Taping

(a) WRITTEN REPORT OF EXPERTS. At least thirty (30) days before any party's expert deposition, the opposing party shall be entitled to have a written report signed by such expert encompassing all of the criteria detailed in Rule 26(b)(4) of the Civil Rules and the curriculum vitae of the expert.

(b) TESTIMONY AND THE EXPERTS' WRITTEN REPORT/DEPOSITION. The testimony of an expert witness at trial shall be based upon the opinions advanced in the written report and/or the expert's deposition referenced in subsection (a). Experts shall not be permitted to testify on matters beyond the scope of the subjects and the opinions expressed in the referenced written report and the depositions, absent extenuating circumstances based upon newly discovered evidence, all of which is subject to the court's judicial discretion in regard to trial testimony. In the exercise of its discretion, the court shall consider timely notice and prejudice to the parties.

(c) VIDEO TAPING OF EXPERT TESTIMONY.

(1) The video taping of the testimony of expert witnesses is encouraged.

(2) Absent good cause shown, if a firm trial date has been set at least forty-five (45) days in advance of trial, and the testimony of an expert witness has not been video taped, and the witness is unavailable for the trial, the parties will be required to proceed at trial.

(d) PAYMENT FOR EXPERT WITNESS DEPOSITION.

(1) The attorney noticing the expert's deposition shall be responsible for the expert's reasonable charges for the time

spent in the deposition unless the parties or their attorneys have agreed to the contrary in writing. The noticing party shall have a reasonable time to pay the expert's fees. However, upon receipt of a proposed bill indicating the expert's charges, the reasonableness of the charges shall be subject to the review of the court. If the deposing party intends to object to the charges and their reasonableness, an application shall be made before the deposition to the court to obtain a ruling on the reasonableness of the charges.

(2) To the extent an expert demands payment in advance of the deposition date, absent an agreement, the party who has noticed the expert for deposition must advance or otherwise secure such sums.

Rule 27. DEPOSITIONS BEFORE ACTION OR PENDING Appeal

Rule 28. PERSONS BEFORE WHOM A DEPOSITION MAY BE TAKEN

Rule 29. STIPULATIONS REGARDING Discovery Procedure

Rule 30. DEPOSITIONS UPON ORAL EXAMINATION

Rule 30.1. Filing of Depositions

Depositions are not to be filed with the clerk of court unless the case proceeds to trial or unless a motion to so file has been previously granted by the court. If a case is to proceed to trial, the depositions shall be then filed with the clerk of the court three (3) days before the case is to begin. In this regard, the party taking the deposition shall be the custodian of the original deposition, and that party shall be required to file the original prior to trial if the matter is to proceed to trial. A party filing depositions must file a notice of the same with a list of all depositions filed, which list must be served on all counsel of record. Upon completion of a case, including all appeals, all depositions shall be returned to the party who took the deposition unless the deposition has been made a part of the court proceeding during the course of the trial as an exhibit. In this regard, before returning the original depositions to the party who took them at the conclusion of a case, the clerk of the court shall give notice to all parties that he intends to return all such depositions and give any party ten (10) days to object to the returning of any such depositions.-Adopted July 20, 1992, eff. July 21, 1992.

Rule 31. DEPOSITIONS UPON WRITTEN QUESTIONS

Rule 32. USE OF DEPOSITIONS IN COURT PROCEEDINGS

Rule 33. INTERROGATORIES TO PARTIES

Rule 33.1. Interrogatories

Each interrogatory shall be answered separately and fully in writing under the penalties of perjury, unless there is an objection thereto, in which event the reasons for objection shall be stated in lieu of the answer. In lieu of filing the original, unanswered interrogatories, the interrogating party shall file with the clerk of the court a notice that interrogatories have been served, naming the party to whom the interrogatories are addressed and the date of service on the party.

Interrogatories shall be prepared in such a fashion that sufficient space for insertion of the answers is provided after each interrogatory or subsection thereof. The answering party shall insert answers on the original interrogatories served on him/her and return the original to the party that propounded such interrogatories with copies served on all counsel. If insufficient space exists on the original for insertion of answers, the answering party shall retype the questions and answers to ensure that each answer follows the question or subsection thereof.

No party shall serve on any other party more than fifty (50) interrogatories in the aggregate without leave of court. Each subpart of an interrogatory shall count as an additional interrogatory. Any party desiring to serve additional interrogatories shall file a written motion setting forth the proposed additional interrogatories and the reasons establishing good cause for their use—Adopted July 20, 1992, eff. July 21, 1992; amended Feb. 8, 1996, eff. Feb. 19, 1996.

(As amended March 3, 2000, eff. March 20, 2000).

HISTORY

AMENDMENTS-2000. Amended by deleting the following language from the second paragraph, "file the original signed answers with the clerk of the court and serve all counsel" and adding instead "return the original to the party that propounded such interrogatories with copies served on all counsel."

Rule 34. PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES

Rule 35. PHYSICAL AND MENTAL EXAMINATION OF WITNESSES

Rule 36. REQUESTS FOR ADMISSIONS

Rule 37. FAILURE TO MAKE OR COOPERATE IN DISCOVERY: SANCTIONS

Rule 37.1. **Informal Conference to Settle Discovery Disputes -
Motions Generally**

No motion relative to discovery shall be accepted for filing unless accompanied by a certificate of counsel for the moving party, stating that counsel have met and conferred for purposes of amicably resolving issues and stating why they are unable to agree or stating that opposing counsel has refused to so meet and confer after reasonable notice. Counsel for the moving party shall arrange the conference. If the court finds that opposing counsel has willfully refused to meet and confer or, having met, willfully refused or failed to confer in good faith, the court may impose such sanctions as it deems proper.

Additionally, counsel are urged to confer with opposing counsel on all motions prior to filing thereof.-Adopted July 20, 1992, eff. July 21, 1992.

Rule 37.2. Form of Discovery Motions

Any discovery motion filed pursuant to Rules 26 through 37 of the Federal Rules of Civil Procedure shall include, in the motion itself or in an attached memorandum, a verbatim recitation of each interrogatory, request, answer, response, and objection which is the subject of the motion or a copy of the actual discovery document which is the subject of the motion.-Adopted July 20, 1992, eff. July 21, 1992.

VI. Trials

Rule 38. JURY TRIAL OF RIGHT

Rule 38.1. Notation of "Jury Demand" in the Pleading

If a party demands a jury trial by endorsing it on a pleading, as permitted by Rule 38(b) of the Civil Rules, a notation shall be placed on the front page of the pleading, immediately following the title of the pleading, stating "Demand For Jury Trial" or an equivalent statement. This notation will serve as a sufficient demand under Rule 38(b). Failure to use this manner of noting the demand will not result in a waiver under Rule 38(d).

Rule 39. TRIAL BY JURY OR BY THE COURT

Rule 39.1. Trial Briefs

(a) Copies of all briefs and memoranda of law intended to be filed with the court by any party shall be given to counsel for the opposing party at least forty-eight (48) hours before they are presented to the court.

(b) A copy of any recorded lis pendens shall be filed with the papers in any suit and a copy furnished opposing counsel.

Rule 39.2. Jury Instructions

In all civil cases scheduled for trial, all counsel must submit proposed jury instructions at least six (6) days prior to commencement of trial.

Rule 40. ASSIGNMENT OF CASE FOR TRIAL

Rule 41. DISMISSAL OF ACTIONS

Rule 42. CONSOLIDATION; SEPARATE TRIALS

Rule 43. TAKING OF TESTIMONY

Rule 43.1. Interpreters

The parties involved in civil litigation, in which there will be a need for an interpreter(s), will be responsible for securing and submitting the name(s) of qualified interpreters for approval by the court, at least two (2) days before court sessions. In these instances, the party requiring interpreter's services must pay the cost of such service.-Adopted July 20, 1992; eff. July 21, 1992.

Rule 44. PROOF OF OFFICIAL RECORD

Rule 44.1. DETERMINATION OF FOREIGN LAW

Rule 45. SUBPOENA

Rule 46. EXCEPTIONS UNNECESSARY

Rule 47. JURORS

Rule 47.1. Exemption from Jury Service

The district court finds that exemption of the following groups of persons or occupational classes are in the public interest and would not be inconsistent with 28 U.S. Code § 1863(b) (6):

(a) Members in active service in the Armed Forces of the United States;

(b) Members of the fire and police departments of the Territory, whether salaried or volunteer;

(c) Public officers in the federal or territorial governments who are either elected, or who are directly appointed by elected officials.-Adopted July 20, 1992; eff. July 21, 1992.

Rule 48. NUMBER OF JURORS-PARTICIPATION IN VERDICT

Rule 48.1. Number of Jurors

(a) Except as provided in subsection (b), the court shall seat a jury of eight (8) members with no alternates and all jurors shall participate in the verdict.

(b) Whenever the court in its discretion determines that the interests of justice so require, the court may seat a jury of as many as twelve (12) members and any number of alternates, and all jurors (but not the alternates) shall participate in the verdict.

(c) Unless the parties otherwise stipulate, (1) the verdict shall be unanimous and (2) no verdict shall be taken from a jury reduced in size to fewer than six (6) members.-Adopted Feb. 3, 1993.

Rule 49. SPECIAL VERDICTS AND INTERROGATORIES

Rule 50. MOTION FOR A DIRECTED VERDICT AND FOR JUDGMENT NOTWITHSTANDING THE VERDICT

Rule 51. INSTRUCTIONS TO THE JURY: OBJECTION

Rule 52. FINDINGS BY THE COURT

Rule 53. MASTERS

VII. Judgment

Rule 54. JUDGMENTS; COURTS

Rule 55. DEFAULT

Rule 56. SUMMARY JUDGMENT

Rule 56.1. Summary Judgment and Other Dispositive Motions

The following procedures govern motions and cross-motions for summary judgment and all other dispositive motions filed pursuant to Civil Rules 12 and 56. These procedures do not apply to motions concerning discovery, *pro hac vice* admissions, amendments to pleadings, and other nondispositive motions, nor do they govern *habeas corpus* or *pro se* litigation.

(a) PLEADINGS TO BE SERVED AND FILED BY MOVANT.

(1) Notice and Motion. Each dispositive motion shall be accompanied by a notice of motion, brief, affidavits and/or other supporting documentation, including a statement of the material facts about which the movant contends there is no genuine issue, incorporating references to the parts of the record relied on to support the motion and the statement. The movant shall serve all parties with the notice and all pleading and supporting documentation. The movant simultaneously shall file only the notice of motion with the Clerk (with a copy for the district judge's law clerk), which extends the time for filing an answer if one has not yet been filed.

(2) Any reply from the movant is due within ten (10) days of being served with an opposition from an adverse party. One copy of each reply shall be served on all parties, with a copy of the cover letter simultaneously filed with the Clerk (with a copy for the district court law clerk).

(3) After the motion has been addressed by all parties and is ready for submission to the Court, the movant shall file a cover letter and all original papers received from all parties with the Clerk (with one copy of each for the district judge's law clerk) and shall serve copies of the cover letter and submitted papers on all parties. The cover letter shall list separately each document being filed.

(4) If no opposition to the motion has been filed within five (5) days of the time period stated in this Rule and

any extensions thereof, the movant shall certify that no response has been received and file such certification and all papers with the Clerk of Court in accordance with Section (a)(3) of this Rule.

(b) PLEADINGS TO BE SERVED BY RESPONDENT.

Any party adverse to a motion submitted under this rule may respond by serving a notice of response, opposition, brief, affidavits and other supporting documentation, accompanied by a separate concise counterstatement of all material facts about which the respondent contends there exist genuine issues necessary to be litigated, which shall include references to the parts of the record relied on to support the response and statement. An original and two copies of all opposition papers shall be served on the moving party within twenty (20) days after being served with the notice and motion (with one copy served on all other parties). The respondent simultaneously shall file **only** a copy of the notice of response with the Clerk (with copy to the district judge's law clerk).

(c) EXTENSIONS OF TIME.

If the opposition or reply cannot be served within the respective time period, the parties shall first make a good faith effort to negotiate a reasonable extension. Only if the parties cannot so agree, may an application be made to the district judge to whom the case has been assigned, or to the magistrate judge if it is unassigned, for an extension of time to serve the opposition or reply. - Adopted July 20, 1992, eff. July 21, 1992; generally revised and amended Feb. 8, 1996, eff. Feb. 19, 1996.

(As amended March 3, 2000, eff. March 20, 2000).

HISTORY

AMENDMENTS-2000. Amended (a)(3) above with the added language, "and shall serve copies of the cover letter and submitted papers on all parties." Added (a)(4) in its entirety.

Rule 56.2. Response to Motion for Summary Judgment [Deleted]

Rule 57. DECLARATORY JUDGMENTS

Rule 58. ENTRY OF JUDGMENT

Rule 59. NEW TRIALS; AMENDMENT OF JUDGMENTS

Rule 60. RELIEF FROM JUDGMENT OR ORDER

Rule 61. HARMLESS ERROR

Rule 62. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

Rule 63. DISABILITY OF A JUDGE

*VIII. Provisional and Final Remedies
and Special Proceedings*

Rule 64. SEIZURE OF PERSON OR PROPERTY

Rule 65. INJUNCTIONS

Rule 65.1. SECURITY; PROCEEDINGS AGAINST SURETIES

Rule 66. RECEIVERS APPOINTED BY FEDERAL COURTS

Rule 67. DEPOSIT IN COURT

Rule 67.1. Monies Paid into Court

(a) All moneys paid into court or received by an officer thereof, in any case pending or adjudicated in the court, shall forthwith be deposited in a depository designated by the court, in the name and to the credit of the court. Any such money may, however, be paid to the rightful owner upon security, according to the agreement of the parties, under the direction of the court.

(b) No money deposited shall be withdrawn except by order of court. In every case in which the right to withdraw money deposited in court has been adjudicated or is not in dispute and such money has remained so deposited for at least five (5) years unclaimed by the person entitled thereto, the court shall cause such money to be deposited in the treasury of the Virgin Islands in the name and to the credit of the Government of the Virgin Islands. Any claimant entitled to any such money may, thereafter, on petition to the court and upon notice to the United States Attorney and full proof of his right thereto, obtain an order directing the Government to pay such money to him/her.-Adopted July 20, 1992, eff. July 21, 1992.

**Rule 67.2. Withdrawal of a Deposit Pursuant to
Rule 67 Fed. R. Civ. P.**

Any person seeking withdrawal of money which was deposited in the court pursuant to Rule 67 and which was subsequently deposited into an interest-bearing account or instrument as required by Rule 67 of the Civil Rules, shall provide, on a separate paper attached to the motion seeking withdrawal of the funds, the social security number or tax identification number of the ultimate recipient of the funds. This separate paper shall be forwarded by the court directly to the institution holding the money.-Adopted July 20, 1992; eff. July 21, 1992.

Rule 68. OFFER OF JUDGMENT

Rule 69. EXECUTION

Rule 69.1. Execution

(a) No attachment or execution shall be made on wages except as provided by Title 5 Virgin Islands Code, chapter 44, and this rule.

(b) A judgment creditor, upon application and filing an affidavit which contains a description of his judgment and its amount and which states that execution has been returned unsatisfied and after giving mailed notice to the employer-garnishee and the judgment debtor, may obtain an order for the garnishment of the wages of his judgment debtor.

(c) An employer-garnishee or judgment debtor may move to vacate a lien and continuing levy created pursuant to Title 5, Virgin Islands Code, chapter 44, at any time before vacation or lapse of the levy. Upon receiving written notice of any court proceeding attacking the levy or the judgment on which it is based, the employer shall make no further payments to the judgment creditor or his legal representative until receipt of an order of court terminating the proceedings.

(d) The judgment creditor shall:

(1) file with the clerk of the court every three (3) months after the serving of levy upon an employer-garnishee a receipt showing the amount received and the balance due under the levy as of the date of filing, and furnish copies thereof to the employer-garnishee and judgment debtor;

(2) file a final receipt with the court, and furnish a copy thereof to the employer-garnishee and judgment debtor; and,

(3) move to vacate the levy within twenty (20) days after such levy has been satisfied.

If the judgment creditor fails to file any of the receipts prescribed by 5 V.I.C. § 524(a), any interested party may move the court to compel the defaulting judgment creditor to appear in court and make an accounting forthwith.

A judgment creditor receiving payments under this rule from an employer-garnishee shall give the clerk of the court written notice of the receipt of amounts from any other source that are credited upon the judgment.

(e) No discovery under Rules 26 to 37 of the Civil Rules shall be conducted in a proceeding pursuant to this rule without first obtaining an order of the court, except that the following questions may be propounded to the employer-garnishee upon written interrogatory:

(1) Were you, at the time of receiving this interrogatory, the employer of the defendant?

(2) State the amount paid the defendant as wages in the most recent weekly pay period or a pay period of a different duration.-Adopted July 20, 1992; eff. July 21, 1992.

Rule 70. JUDGMENT FOR SPECIFIC ACTS; VESTING TITLE

Rule 71. PROCESS ON BEHALF OF AND AGAINST PERSONS NOT PARTIES

Rule 71A. CONDEMNATION OF PROPERTY

Rule 71A.1. Proceedings to Redetermine Deficiency in Income Tax

(a) PETITIONS AFTER NOTICE OF DEFICIENCY.

A proceeding to redetermine the income tax liability pursuant to a notice of deficiency or notice of liability of any person or transferee to the Virgin Islands shall be by petition naming the Director, Virgin Islands Bureau of Internal Revenue, as respondent. To the extent consistent with the Internal Revenue Code as

applicable to the Virgin Islands, the following rules of the United States Tax Court, as amended from time to time, shall apply:

<u>Rule</u>	<u>Subject</u>
34(a) (b) and (c)	Petition
36	Answer
37	Reply
91	Stipulations
122	Submission Without Trial
142	Burden of Proof
151	Briefs
155	Computation By Parties For Entry of Decision
210, 211, 213, 215, 216, 217	Declaratory Judgment Actions

In applying each rule of the Tax Court incorporated herein, the word "Director" shall be substituted for "Commissioner" and the words "District Court of the Virgin Islands" shall be substituted for "Tax Court." Any provision of the Tax Court Rules incorporated by this rule (1) relating to service of a petition or other papers, (2) describing the number of copies of a paper or pleading to be filed, or (3) relating to the place or manner of filing a petition shall not apply. The Federal Rules of Civil Procedure otherwise apply.

(b) SPECIAL RULE FOR SMALL TAX CASES.

For cases in which the income tax deficiency (including any additions to tax, additional amounts and penalties) in dispute is less than \$10,000, Rules 170 (General), 171 (Small tax case defined), 172 (Election of small tax case procedure), 173 (Discontinuance of proceedings), 175(a)(1), (3), (b), and (c) (Pleadings), 176 (Preliminary hearings), 177(b) and(c) (Trial) of the United States Tax Court, as amended from time to time, and Rules 73-75, inclusive, the Civil Rules, shall apply to the extent consistent with the Internal Revenue Code as applicable to the Virgin Islands.

(c) OTHER ACTIONS.

All other actions relating to the income tax laws of the Virgin Islands are not affected by this rule. Adopted July 20, 1992, eff. July 21, 1992.

Rule 72. MAGISTRATE JUDGES AND PRETRIAL MATTERS

Rule 72.1. Magistrate Judges

The Magistrate Judges are hereby designated to hear and determine in all civil causes any pretrial matter pending before the court and which include, but are not limited to the following:

(a) DUTIES IN CIVIL MATTERS.

(1) *Nondispositive Motions.* Hear and determine any pretrial motion or other pretrial matter, other than those motions specified in subsection A.2 below, in accordance with 28 U.S.C. § 636(b)(1)(A) and Rule 72 of the Civil Rules. An appeal from a Magistrate Judge's determination of such a nondispositive motion shall be served and filed in accordance with subsection D.4 below entitled "Appeals from Nondispositive Orders".

(2) *Dispositive Motions.* Hear and conduct such evidentiary hearings as are necessary or appropriate, and submit to a Judge proposed findings of fact and recommendations for the disposition of motions for injunctive relief (including temporary restraining orders and preliminary injunctions), for judgment on the pleadings, for summary judgment, to dismiss or permit maintenance of a class action, to dismiss for failure to state a claim upon which relief may be granted, to involuntarily dismiss an action, for default judgments, for attorney's fees and costs, for judicial review of administrative determinations, and actions for review of prisoners' petitions challenging conditions of confinement, in accordance with 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Civil Rules. Any party may object to the Magistrate Judge's proposed findings, recommendations or report issued under this Rule by serving and filing an objection in accordance with subsection D.5 below, entitled "Objections to Magistrate Judge's Proposed Findings".

(3) *Conducting Civil Trials by Consent of the Parties.* Where the parties consent, conduct a jury or non-jury trial in any civil action and order the entry of final judgment in accordance with 28 U.S.C. § 636(c) and Rules 73-76 of the Civil Rules. In the course of conducting proceedings in any civil action upon the consent of the parties, a Magistrate Judge may hear and determine any and all pretrial and post-trial motions including case-dispositive motions.

(A) The clerk of the court shall notify the parties in all cases that they may consent to have a Magistrate Judge conduct any or all proceedings in the case and order the entry of a final judgment. Such notice shall be mailed to the parties with the notice of the first pretrial conference.

(B) The clerk of the court shall not accept a consent form for filing unless it has been signed by all the parties in a case. Plaintiff shall be responsible for securing execution and filing of such a consent form. No consent form will be made available, nor will its contents be made known to any District Judge or Magistrate Judge, unless all stated parties have consented to the reference to a Magistrate Judge. No Magistrate Judge, District Judge or other court official may attempt to persuade or induce any party to consent to the reference of any matter to a Magistrate Judge. This Rule, however, shall not preclude a District Judge or Magistrate Judge from informing the parties that they may have that option.

(C) The consent form shall be filed with the clerk of the court not later than fifteen (15) days after the date of the final pretrial conference.

(D) After the consent form has been executed and filed, the clerk of the court shall so advise the District Judge to whom the case has been assigned. At the direction of the District Judge, the clerk of the court shall prepare for the District Judge's signature, an order referring the case to a Magistrate Judge. Once the case has been referred, the Magistrate Judge shall have the authority to conduct any and all proceedings to which the parties have consented and to direct the clerk of the court to enter a final judgment in the same manner as if a District Judge presided.

(4) *Civil Case Management.*

(A) Exercise general supervision of the civil calendars of the court, conduct calendar and status calls, and determine motions to expedite or postpone the trial of cases for the District Judges.

(B) Conduct pretrial conferences as set forth in Rule 16 and 26(f) of the Civil Rules, which include but are not limited to scheduling, settlement, discovery, preliminary and final pretrial conferences, and entry of appropriate orders.

(C) As part of the Magistrate Judge's general supervision of the civil calendar, the Magistrate Judge shall conduct scheduling conferences and enter scheduling orders in accordance with Rule 16 of the Civil Rules in all civil cases as appropriate.

(5) Conducting voir dire and selecting petit juries for the court and in the absence of the District Judge, accepting petit jury verdicts in civil cases.

(6) Issuing subpoenas, writs of *habeas corpus ad testificandum* or *habeas corpus ad prosequendum*, or other orders necessary to obtain the presence of parties or witnesses or evidence needed for court proceedings.

(7) Conducting proceedings for the collection of civil penalties of not more than \$200 assessed under the Federal Boat Safety Act of 1971, in accordance with 46 U.S.C. § 1484(d).

(8) Conducting examinations of judgment debtors, in accordance with Rule 69 of the Civil Rules.

(9) Reviewing petitions in civil commitment proceedings under Title III of the Narcotic Addict Rehabilitation Act.

(10) Issuing warrants or entering orders permitting entry into and inspection of premises, and/or seizure of property, in noncriminal proceedings, as authorized by law, when properly requested by the IRS or other Governmental agencies.

(11) Upon the request of the United States Attorney, authorizing the installation of pen registers, caller identification, or similar devices excluding wiretaps, and executing orders directing telephone company assistance to the government for such installation.

(12) Serving as a special master in an appropriate civil action pursuant to 28 U.S.C. § 636(b)(2) and Rule 53 of the Civil Rules. Magistrate Judge may, where the parties consent, serve as a special master in any civil action without regard

to the provisions of Rule 53(b) of the Civil Rules and try the issues of any civil action. The entry of final judgment in the civil action, however, shall be made by a District Judge or at the direction of a District Judge with the consent of the parties.

(13) Administering oaths and affirmations and taking acknowledgements, affidavits, and depositions.

(14) Supervising proceedings conducted pursuant to 28 U.S.C. § 1782 with respect to foreign tribunals and to litigants before such tribunals.

(15) Adjudicating non-dispositive sanctions under the Civil Rules, Rules of this court or applicable statutes.

(b) APPEALS FROM JUDGMENTS AND OTHER ORDERS.

(1) *Appeal from Judgments in Civil Cases Disposed of by a Magistrate Judge on Consent of the Parties.*

(A) Appeal to the Third Circuit. Upon the entry of judgment in a civil case disposed of by a Magistrate Judge on consent of the parties under authority of 28 U.S.C. § 636(c) and General Rule 73, an aggrieved party shall appeal directly to the Third Circuit in the same manner as an appeal from any other judgment of this court.

(B) Appeal to a District Judge.

(i) In accordance with 28 U.S.C. § 636(c)(4), the parties may consent to appeal any judgment in a civil case disposed of by a Magistrate Judge to a District Judge of this court rather than directly to the Third Circuit. In such a case, the appeal shall be taken by filing a notice of appeal with the clerk of the court within 30 days after entry of the judgment. For good cause shown, the Magistrate Judge or District Judge to whom the case has been assigned may extend the time for filing the notice of appeal for an additional twenty (20) days. Any request for such an extension, however, must be made before the original time period for such an appeal has expired. In the event a motion for new trial is timely filed, the time for appeal from the judgment of the Magistrate Judge shall be extended thirty (30) days

from the date of the ruling on the action for new trial, unless a different period is provided by the Civil or Appellate Rules.

(ii) The clerk shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record for all parties other than the appellant or, if a party is not represented by counsel, to the party at last known address.

(iii) The record on appeal to a District Judge shall consist of the original papers and exhibits filed with the court and the transcript of the proceedings before the Magistrate Judge, if any. Every effort should be made by the parties, counsel and the court to minimize the production and costs of transcriptions of the record and otherwise to render the appeal expeditious and inexpensive, as mandated by 28 U.S.C. § 636(c) (4).

(2) *Brief on Appeal to a District Judge.*

In all appeals under subsections D.1 and D.2(b) above, the appellant shall serve and submit a brief within twenty (20) days of the filing of the notice of appeal. The appellee shall serve and submit a brief within twenty (20) days after the receipt of a copy of appellant's brief. The appellant may serve and submit a reply brief within five (5) days after receipt of the appellee's brief. Approximately fifty (50) days after the filing of the notice of appeal, the clerk of the court shall place that appeal upon the calendar for hearing.

(3) *Appeals From Non-Dispositive Orders.*

(A) Any party may appeal from a Magistrate Judge's determination of a non-dispositive matter within ten (10) days after entry of the Magistrate Judge's order, unless a different time is prescribed by the Magistrate Judge or District Judge. Such party shall file with the clerk of the court and serve on all parties a written notice of appeal which shall specifically designate the order or part thereof appealed from and the basis for objection thereto. The notice of appeal shall provide to the court a transcript of that portion of the hearing before the Magistrate Judge wherein findings of fact were made, no later than ten (10) days before the return date of the motion. A District Judge shall consider the appeal and

set aside any portion of the Magistrate Judge's order found to be clearly erroneous or contrary to law.

(B) The filing of such a motion to appeal does not operate to stay the order pending appeal to a District Judge. A stay of a Magistrate Judge's order pending appeal must be sought in the first instance from the Magistrate Judge whose order had been appealed, upon due notice to all interested parties.

(4) Objections to Magistrate Judge's Proposed Findings, Recommendation or Report.

Any party may object to the Magistrate Judge's proposed findings, recommendations or report issued under this Rule within ten (10) days after being served with a copy thereof. Such party shall file with the clerk of the court and serve on all parties written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis of such objection. Such party shall file with the clerk of the court a transcript of the specific portions of any evidentiary proceeding to which objection is made. A District Judge shall make a *de novo* determination of those portions to which objection is made and may accept, reject, or modify in whole or in part, the findings or recommendations made by the Magistrate Judge. The District Judge, however, need not normally conduct a new hearing and may consider the record developed before the Magistrate Judge, making his or her own determination on the basis of the record. The District Judge may also receive further evidence, recall witnesses or recommit the matter to the Magistrate Judge with instructions.-Adopted July 20, 1992, eff. July 21, 1992; amended Feb. 3, 1993.

Rule 73. MAGISTRATE JUDGES; TRIAL BY CONSENT AND APPEAL OPTIONS

Rule 74. METHOD OF APPEAL FROM MAGISTRATE JUDGE TO DISTRICT JUDGE

Rule 75. PROCEEDINGS ON APPEAL FROM MAGISTRATE JUDGE TO DISTRICT JUDGE

Rule 76. JUDGMENT OF THE DISTRICT JUDGE ON THE APPEAL

IX. Appeal

Rule 76.1. Rules of Practice in the Appellate Division

Practice in the Appellate Division of the District Court of the Virgin Islands of the United States shall conform to the fullest possible extent with the practice in the court of Appeals for the Third Circuit, and shall be governed by the Federal Rules of Appellate Procedure, the Rules of the United States Court of Appeals for the Third Circuit, the case law interpreting these rules, and such local rules as experience determines to be necessary and appropriate. An appeal to the District Court may be had on any basis under which an appeal could be had from the District Court to the Court of Appeals for the Third Circuit.

Appeals to the District Court of the Virgin Islands from the Territorial Court of the Virgin Islands pursuant to § 23A(b) of the Revised Organic Act shall be heard and determined by the Appellate Division of the District Court of the Virgin Islands consisting of three judges, one of whom may be an assigned judge of the Territorial Court of the Virgin Islands designated by the presiding judge of the Appellate Division. An assigned Territorial Court judge may not be designated from the division in which the appeal is pending.

The appellate division of the District Court of the Virgin Islands shall convene quarterly, commencing in April 1985 in the Division of St. Thomas and St. John and thereafter shall alternate between the divisions of the court at such date and time as the presiding judge may determine. The presiding judge may order such additional terms of court as may be required.-Adopted July 20, 1992, eff. July 21, 1992.

X. District Courts and Clerks of the Courts

Rule 77. DISTRICT COURTS AND CLERKS

Rule 77.1. Sessions of the Court

(a) Sessions of the District Court for the Division of St. Thomas and St. John shall be held monthly, commencing on the second Monday in September and the first Monday of October, November, December, January, February, March, April, May, June and July of each year. The calendar of all pending cases shall be called on the first Monday of each session, except September, when it will be called on the second Monday, and also at such other sessions as the court may, by order, direct. Regular sessions of the court shall be held in Charlotte Amalie, Virgin Islands.

(b) Sessions of the District Court for the Division of St. Croix shall be held monthly, commencing on the fourth Monday in

September, October, November, December, January, February, March, April, May and June of each year. The calendar of all pending cases for the following session shall be called on the last day of each session, and also at such other sessions as the court may, by order, direct. Regular sessions of the court shall be held in Christiansted, St. Croix.

(c) A session of the District Court continues for all purposes until terminated by an order, final adjournment, or by commencement of the next regular session in the same division.

(d) The daily sessions of the court will begin at 9 o'clock a.m., unless otherwise ordered.-Adopted July 20, 1992, eff. July 21, 1992.

Rule 78. MOTION DAY

Rule 79. BOOKS AND RECORDS KEPT BY THE CLERK AND ENTRIES THEREIN

Rule 79.1. Books and Records of the Clerk of the Court

(a) The clerk of the District Court shall:

(1) Before entering upon his duties, take the oath or affirmation prescribed by § 951 of Title 28, United States Code;

(2) Give bond to the United States as provided by § 952 of Title 28, United States Code;

(3) Have custody of the seal of the court and affix it when required;

(4) Receive, deposit in depositaries designated by the court and disburse in accordance with law and the rules and orders of the court, all fees and other moneys due to the clerk of the court or otherwise payable into court;

(5) Take charge of and safely keep or dispose of according to law all books, papers and records which may be filed and deposited in his offices;

(6) Take custody of and maintain the law libraries of the court in Charlotte Amalie and Christiansted and keep them open during reasonable hours;

(7) Supervise and direct the work of his deputies and assistants, and act as administrative officer of the court;

(8) Attend in person or by deputy each session of the court;

(9) Issue all process and notices required to be issued;

(10) Keep the minutes of all sessions of the court;

(11) Keep in his office in each judicial division criminal, civil, admiralty, bankruptcy, probate, naturalization and miscellaneous dockets in the form required by the Director of the Administrative Office of the United States Courts, and enter in the appropriate docket the title of each cause or proceeding begun in the judicial division, and a memorandum of every subsequent proceeding therein, with the date thereof, and a record of all fees charged;

(12) Keep such other indexes and records and make such reports as may be necessary in the performance of the duties of his office and as may be required by law, the Federal Rules of Criminal Procedure, the Federal Rules of Civil Procedure, and the Admiralty Rules, the General Orders in Bankruptcy, the rules of the District Court, or the Director of the Administrative Office of the United States Courts, and certify copies of the same whenever requested;

(13) Exercise such other powers and perform such other duties as may be assigned to him by the court.

(b) The clerk of the court shall prepare a calendar for each session of the district court in each judicial division which shall list the causes on the several dockets which are ready to be heard at that session in that division. Cases that become ready for hearing during the session may be added to the calendar.—Adopted July 20, 1992, eff. July 21, 1992.

Rule 80. STENOGRAPHER; STENOGRAPHIC REPORT OR TRANSCRIPT AS EVIDENCE

Rule 80.1. Court Reporting Fees

A current schedule of transcript fees, as established by the Judicial Conference, is posted in the clerk of the court's office and is available from the official court reporters.—Adopted July 20, 1992, eff. July 21, 1992.

XI. General Provisions

Rule 81. APPLICABILITY IN GENERAL

Rule 82. JURISDICTION AND VENUE UNAFFECTED

Rule 83. RULES BY DISTRICT COURTS

Rule 83.1. Admission of Attorneys

(1) *Scope of Admission.* The bar of this court shall consist of those persons heretofore admitted to practice in this court and those who may hereafter be admitted in accordance with these rules. Notwithstanding the provisions of subsection (2) below, the following category of persons shall not be admitted: any attorney who has been suspended, disbarred, resigned or withdrawn from the practice of law and has not been reinstated as a member of the bar of this court. The procedure for readmission for that category of persons is set forth in Rule 83.2(7), entitled "Reinstatement After Suspension, Disbarment, Withdrawal or Resignation."

(2) *Territory of the Virgin Islands Attorneys.* Any attorney licensed to practice by the Territorial Court of the Virgin Islands may be admitted as an attorney at law on motion of a member of the bar of this court, made in open court, and upon taking the prescribed oath and signing the roll.

(3) *Appearance Pro Hac Vice; Local Counsel.* Any member in good standing of the bar of any court of the United States or of the highest court of any state, who is not under suspension or disbarment by any court and is ineligible for admission to the bar of this court under subdivision (2) of this Rule, may in the discretion of the court, on motion, be permitted to appear and participate in a particular case. If it has not been done prior to the granting of such motion, an appearance as counsel of record shall be filed promptly by a member of the bar of this court ("local counsel") upon whom all notices, orders and pleadings may be served, and who shall promptly notify his specially admitted associate of their receipt. Admission *pro hac vice* shall be made in person, in open court, excepting in exceptional circumstances approved by the court. No work of any kind on any case filed with the court may be undertaken until counsel moving under this section has been admitted *pro hac vice*. Only an attorney at law of this court, acting as local counsel, may file papers, enter appearances for parties, sign stipulations, or sign and receive payments on judgments, decrees or orders. An attorney may be admitted *pro hac vice* in no more than a total of three (3) cases in any calendar

year and may not be further admitted at any time if such attorney is then admitted pro hac vice in three (3) active cases regardless of when such admissions occurred. A lawyer admitted pro hac vice is within the disciplinary jurisdiction of this court. (See Rule 83.2.)

(4) *Adherence to Schedules; Sanctions.* All members of the bar of this court and those specially permitted to participate in a particular action shall strictly observe the dates fixed for scheduling conferences, motions, pretrial conferences, trials or any other proceedings. Failure of counsel for any party, or of a party appearing pro se, to comply with this Rule may result in the imposition of sanctions, including the withdrawal of the permission granted under subdivision (3) of this Rule to participate in the particular action. All applications for adjournment shall be made promptly and directed to the Judge or Magistrate Judge to whom the matter is assigned.

(5) *Appearance by Patent Attorneys.* Any member in good standing of the bar of any court of the United States or of the highest court of any state who is not eligible for admission to the bar of this court under subdivision (2) of this Rule may be admitted as an attorney at law, subject to the limitations hereinafter set forth, on motion of a member of the bar of this court and upon taking the prescribed oath and signing the roll, provided such applicant has filed with the clerk of the court a verified application for admission as an attorney of this court establishing that the applicant:

(A) is a member in good standing of the bar of any United States court or the highest court of any state for at least five (5) years;

(B) has been admitted to practice as an attorney before the United States Patent Office and is listed on its Register of attorneys;

(C) has been continuously engaged in the practice of patent law as a principal occupation in an established place of business and office located in the Territory of the Virgin Islands for at least two (2) years prior to date of application; and

(D) has sufficient qualifications both as to prelegal and legal training to satisfy the court. No member admitted under this subdivision shall designate himself or herself other than as a patent attorney or patent lawyer, and that person's

admission to practice before this court shall be limited to cases solely arising under patent laws of the United States or elsewhere. Failure to continue to maintain an established place of business or office within the Territory for the practice of patent law shall, upon proof thereof to the court, justify the striking of such attorney's name from the roll of patent attorneys established under this Rule. In any litigation, any patent attorney admitted under this subdivision shall be associated of record with a member of the bar of this court admitted under subdivision (2) of this Rule. Nothing herein contained shall preclude any patent attorney from being admitted under subdivision (2) or (3) of this rule.

(6) *Appearance by Attorneys for the United States.* Any attorney admitted to practice in any United States District Court may practice before this court in any proceeding in which he or she is representing the United States or any of its officers or agencies. If such attorney does not have an office in this district, he or she shall designate the United States Attorney to receive service of all notices or papers in that action. Service upon the United States Attorney or authorized designee shall constitute service upon a government attorney who does not have an office in this district.

(7) *Appearance by Professional Law Corporations.* The provisions of this Rule shall extend to duly created professional law corporations, authorized to be formed under the law of the jurisdiction to which the attorney employed by the corporation shall have been admitted to practice, to the same extent as they apply to partnerships and other unincorporated law firms. In every case in which such a professional law corporation participates, all appearances and papers shall be in the full name of the corporation, including such designations as "Chartered," "Professional Association," "P.C.," and the like, and shall be executed on its behalf by an individual attorney qualified under this Rule and employed by it as "Authorized Attorney." Both the corporate entity and its attorney employee shall be subject to all provisions of these Rules.

(8) *Appearance by Supervised Law Students.* With the court's approval, an eligible law student may appear under supervision of an attorney on behalf of any person, including the United States Attorney, who has consented in writing.

(A) The attorney who supervises a student shall:

(i) be a member of the bar of this court who maintains a bona fide office in this district;

(ii) personally assume professional responsibility for the student's work;

(iii) assist the student to the extent necessary;

(iv) appear with the student in all proceedings before the court; and

(v) file written consent to supervise the student.

(B) In order to appear, the student shall:

(i) be enrolled in a law school approved by the American Bar Association;

(ii) have successfully completed legal studies amounting to at least two-thirds of the credits needed for graduation or the equivalent;

(iii) be certified by either the dean or a faculty member of that law school as qualified to provide the legal representation permitted by these Rules (This certification may be withdrawn by the person so certifying at any time by mailing a notice to the clerk of the court, or upon termination by the Judge presiding in the case in which the student appears without notice or hearing and without a showing of cause. The loss of certification by action of a judge shall not be considered a reflection on the character or ability of the student.);

(iv) be introduced to the court by an attorney admitted to practice in this District;

(v) neither ask for nor receive from the client represented any compensation or remuneration of any kind for services rendered; but this limitation shall not prevent an attorney, legal aid bureau, law school, public defender agency, a state, Territory, or the United States from paying compensation to the eligible law student, nor shall it prevent any agency from making proper charges for its services;

(vi) certify in writing that he or she is familiar and will comply with the Disciplinary Rules;

(vii) certify in writing that he or she is familiar with the federal procedural and evidentiary rules relevant to the action in which he or she is appearing.

(C) The law student, supervised in accordance with these rules, may:

(i) appear as counsel in court or at other proceedings when written consent of the client (or of the United States Attorney when the client is the United States) and the supervising attorney have been filed, and when the court has approved the student's request to appear in the particular case to the extent that the Judge presiding at the hearing or trial permits;

(ii) prepare and sign motions, petitions, answers, briefs, and other documents in connection with any matter in which he or she has met the conditions of (I) above; each such document shall also be signed by the supervising attorney.

(D) Forms for designating compliance with this Rule are set forth in Appendices A-1 and A-2 and shall be available in the clerk of the court's office. Completed forms shall be filed with the clerk of the court.

(E) Participation by students under this Rule shall not be deemed a violation in connection with the rules of admission to the bar of any jurisdiction concerning practice of law prior to admission to that bar.

(9) *Admission Fee.* An attorney admitted to the bar of this court shall pay an admission fee in the amount set by the court. The clerk of the court shall collect such funds and maintain them in the manner set forth by the court in the Plan for Administration and Operation of the Attorney's Admission Fee Account. Such funds are to be used for projects which the court determines are for the benefit of the bench and bar in the administration of justice within the District.

(10) *Appearance of Attorneys in Criminal Cases.* This Rule does not govern the appearance of attorneys representing defendants in criminal cases.

(11) *Appearance by Attorneys for the Government of the Virgin Islands.* A member in good standing of the bar of any other court of the United States or the District of Columbia, or of the highest court of any state, commonwealth, territory or possession, who is

not admitted to practice before the Territorial Court of the Virgin Islands, and who is not under suspension or disbarment by any court, may in the discretion of the court and on motion by the Attorney General of the Virgin Islands or authorized designee, be permitted to appear and participate in any proceeding in which he or she is representing the Government of the Virgin Islands or any of its officers or agencies.-Adopted July 20, 1992, eff. July 21, 1992; amended Feb. 3, 1993; Feb. 8, 1996, eff. Feb. 19, 1996.

Rule 83.2. Attorney Discipline

(a) JUDICIAL ETHICS AND PROFESSIONAL RESPONSIBILITY.

(1) The Rules of Professional Conduct of the American Bar Association shall govern the conduct of the members of the bar admitted to practice in this court, subject to such modifications as may be required or permitted by federal statute, regulation, court rule or decision of law.

(2) The Code of Judicial Conduct of the American Bar Association shall govern the conduct of the judges of this court, subject to such modifications as may be required or permitted by federal statute, regulation, court rule or decision of law.

(b) DISCIPLINE OF ATTORNEYS. The court, in furtherance of its inherent power and responsibility to supervise the conduct of attorneys who are admitted to practice before it or admitted for the purpose of a particular proceeding (pro hac vice), promulgates the following Rules of Disciplinary Enforcement, superseding all of its other Rules pertaining to disciplinary enforcement heretofore promulgated.

(1) *Attorneys Convicted of Crimes.*

(A) Upon the filing with this court of a certified copy of a judgment of conviction demonstrating that any attorney admitted to practice before the court has been convicted in any court of the United States, or the District of Columbia, or of any state, territory, commonwealth or possession of the United States, of a serious crime as hereinafter defined, the court shall enter an order immediately suspending that attorney, whether the conviction resulted from a plea of guilty or nolo contendere, or from a verdict after trial or otherwise, and regardless of the pendency of any appeal, until final disposition of a disciplinary proceeding to be commenced upon such conviction. A copy of such order shall immediately

be served upon the attorney. Upon good cause shown, the court may set aside such order when the interest of justice requires.

(B) The term "serious crime" shall include any felony and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the judgment was entered, involves false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt, conspiracy or solicitation of another to commit a "serious crime."

(C) A certified copy of a judgment of conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against that attorney based upon the conviction.

(D) Upon the filing of a certified copy of a judgment of conviction of an attorney for a serious crime, the court shall, in addition to suspending that attorney in accordance with the provisions of this Rule, also refer the matter to counsel for the institution of a disciplinary proceeding before the court in which the sole issue to be determined shall be the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction, provided that a disciplinary proceeding so instituted will not be brought to final hearing until all direct appeals from the conviction are concluded.

(E) Upon the filing of a certified copy of a judgment of conviction of an attorney for a crime not constituting a serious crime, the court may refer the matter to counsel for a recommendation as to what action, if any, should be taken, including the institution of a disciplinary proceeding before the court; provided, however, that the court may in its discretion make no reference with respect to convictions for minor offenses.

(F) An attorney suspended under the provisions of this Rule will be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction of a serious crime has been reversed but the reinstatement will not terminate any disciplinary proceeding then pending against the attorney, the disposition of which shall be determined by the court on the basis of all available evidence pertaining to both guilt and the extent of discipline to be imposed.

(2) *Discipline Imposed by Other Courts.*

(A) Any attorney admitted to practice before this court shall, upon being subjected to public discipline by any other court of the United States or the District of Columbia, or by a court of any state, territory, commonwealth or possession of the United States, promptly inform the clerk of this court of such action.

(B) Upon the filing of a certified or exemplified copy of a judgment or order demonstrating that an attorney admitted to practice before this court has been disciplined by another court, this court shall forthwith issue a notice directed to the attorney containing:

(i) a copy of the judgment or order from the other court; and,

(ii) an order to show cause directing that the attorney inform this court within thirty (30) days after service of that order upon the attorney, personally or by mail, of any claim by the attorney predicated upon the grounds set forth in subsection (2)(D) below, that the imposition of the identical discipline by the court would be unwarranted and the reasons therefor.

(C) In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this court shall be deferred until such stay expires.

(D) Upon the expiration of thirty (30) days from service of the notice issued pursuant to the provisions of subsection (2)(B) above, this court shall impose the identical discipline unless the respondent-attorney demonstrates or this court finds that, upon the face of the record upon which the discipline in another jurisdiction is predicated, it clearly appears:

(i) that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or,

(ii) that there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this court could not, consistent with its

duty, accept as final the conclusion on that subject; or,

(iii) that the imposition of the same discipline by this court would result in grave injustice; or,

(iv) that the misconduct established is deemed by this court to warrant substantially different discipline.

Where this court determines that any of said elements exist, it shall enter such other order as it deems appropriate.

(E) In all other respects, a final adjudication in another court that an attorney has been guilty of misconduct shall establish conclusively the misconduct for the purposes of a disciplinary proceeding in this court.

(F) This court may at any stage appoint counsel to prosecute the disciplinary proceedings.

(3) *Disbarment on Consent or Resignation in Other Courts.*

(A) Any attorney admitted to practice before this court who shall be disbarred on consent or resign from the bar of any other court of the United States or the District of Columbia, or from the bar of any state, territory, commonwealth or possession of the United States, while an investigation into allegations of misconduct is pending, shall, upon the filing with this court of a certified or exemplified copy of the judgment or order accepting such disbarment on consent or resignation, cease to be permitted to practice before this court and be stricken from the roll of attorneys admitted to practice before this court.

(B) Any attorney admitted to practice before this court shall, upon being disbarred on consent or resigning from the bar of any other court of the United States or the District of Columbia, or from the bar of any state, territory, commonwealth or possession of the United States while an investigation into allegations of misconduct is pending, promptly inform the clerk of this court of such disbarment on consent or resignation.

(4) *Standards for Professional Conduct.*

(A) For misconduct defined in these Rules and for good cause shown, and after notice and opportunity to be heard, any attorney admitted to practice before this court may be disbarred, suspended from practice before this court, reprimanded or subject to such other disciplinary action as the circumstances may warrant.

(B) An act or omission by an attorney admitted to practice before this court, individually or in concert with any other person or persons, which violates the applicable Rules of Professional Conduct referred to in Rule (a)(1) shall constitute misconduct and be grounds for discipline whether or not the act or omission occurred in the course of an attorney-client relationship.

(5) *Disciplinary Proceedings.*

(A) When misconduct or allegations of misconduct which, if substantiated, would warrant discipline of an attorney admitted to practice before this court shall come to the attention of a Judge of this court, whether by complaint or otherwise, and the applicable procedure is not otherwise mandated by these Rules, the Chief Judge, if he or she deems it appropriate, shall refer the matter to the clerk of the court, who shall refer it to counsel for investigation and the prosecution of a formal disciplinary proceeding or the formulation of such other recommendation as may be appropriate. The order of reference to counsel and all further proceedings until the issuance of an order to show cause under subsection (5)(C) below, if any, shall be placed under seal until further order of the court.

(B) Should counsel conclude after investigation and review that a formal disciplinary proceeding should not be initiated against the respondent-attorney because sufficient evidence is not present, or because there is pending another proceeding against the respondent-attorney the disposition of which in the judgment of the counsel should be awaited before further action by this court is considered, or for any other valid reason, counsel shall file with the court a recommendation for disposition of the matter, whether by dismissal, admonition, deferral or otherwise, setting forth the reasons therefor.

(C) To initiate formal disciplinary proceedings, counsel shall obtain an order of this court upon a showing of probable cause requiring the respondent-attorney to show cause within thirty (30) days after service of that order upon that attorney,

personally or by mail, why the attorney should not be disciplined.

(D) Upon the respondent-attorney's answer to the order to show cause, if any issue of fact is raised or the respondent-attorney wishes to be heard in mitigation, this court shall set the matter for prompt hearing before a Judge; provided, however, that if the disciplinary proceeding is predicated upon the complaint of a Judge of this court the hearing shall be conducted before a different Judge appointed by the Chief Judge or, if the Chief Judge is the complainant, by the next active Judge senior in commission. Upon completing the proceeding, the Judge assigned to the matter shall submit his or her findings of fact, conclusions of law and recommendation, if any, to the full court for action.

(6) Disbarment on Consent While Under Disciplinary Investigation or Prosecution.

(A) Any attorney admitted to practice before this court who is the subject of an investigation into or a pending proceeding involving allegations of misconduct may consent to disbarment, but only by delivering to this court an affidavit stating that the attorney desires to consent to disbarment and that:

(i) the attorney's consent is freely and voluntarily rendered; the attorney is not being subjected to coercion or duress; the attorney is fully aware of the implications of such consent;

(ii) the attorney is aware that there is presently pending an investigation or proceeding involving allegations that there exist grounds for the attorney's discipline, the nature of which the attorney shall specifically set forth;

(iii) the attorney acknowledges that the material facts so alleged are true; and

(iv) the attorney so consents because the attorney knows that if charges were predicated upon the matters under investigation, or if the proceeding were prosecuted, the attorney could not successfully defend.

(B) Upon receipt of the required affidavit, this court shall enter an order disbarring the attorney signed by the Chief

Judge, unless unavailable, at which time the order shall be signed by the next active Judge senior in commission.

(C) The order disbaring the attorney on consent shall be a matter of public record; however, the affidavit required by this Rule shall not be publicly disclosed or made available for use in any other proceeding except upon order of this court.

(7) Reinstatement After Suspension, Disbarment, Withdrawal or Resignation.

(A) Time of Application Following Suspension. An attorney suspended for three (3) months or less shall be automatically reinstated at the end of the period of suspension upon filing with the court an affidavit of compliance with the provisions of the order. An attorney suspended for more than three (3) months or disbarred may not resume practice until reinstated by order of this court.

(B) Time of Application Following Disbarment. A person who has been disbarred after hearing or by consent may not apply for reinstatement until the expiration of at least five (5) years from the effective date of the disbarment.

(C) Time of Application Following Resignation or Withdrawal. A person who has withdrawn or resigned from practice before this court may apply for reinstatement at any time.

(D) Hearing on Application. Petitions for reinstatement under this Rule by an attorney who has been suspended or disbarred, or who has resigned or withdrawn from practice of law as an attorney shall be filed with the clerk of the court. Upon receipt of the petition, the clerk of the court shall refer the petition to counsel and shall assign the matter for prompt hearing before a Judge; provided, however, that if the disciplinary proceeding was predicated upon the complaint of a Judge of this court the hearing shall be conducted before a different Judge appointed by the Chief Judge, or if the Chief Judge was the complainant, by the next active Judge senior in commission. The application for reinstatement shall include a review and report by the Professional Ethics and Grievance Committee of the Virgin Islands Bar Association. The Judge assigned to the matter shall, within thirty (30) days after receipt of the bar committee report, schedule a hearing at which the petitioner shall have the burden of demonstrating by clear and convincing evidence that he or she has the moral

qualification, competency and learning in the law required for admission to practice law before this court and that his or her resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice, or subversive of the public interest.

(E) Conditions of Reinstatement. If the petitioner is found unfit to resume the practice of law, the petition shall be dismissed. If the petitioner is found fit to resume the practice of law, the judgment shall reinstate that person, provided that the judgment may make reinstatement conditional upon the payment of all or part of the costs of the proceedings, and upon the making of partial or complete restitution to parties harmed by the petitioner whose conduct led to the suspension or disbarment. If the petitioner has been suspended or disbarred for five (5) years or more, reinstatement may be conditioned, in the discretion of the Judge before whom the matter is heard, upon the furnishing of proof of competency and learning in the law, which proof may include certification by the bar examiners of a state or other jurisdiction of the attorney's successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment.

(F) Successive Petitions. No petition for reinstatement under this Rule shall be filed within one (1) year following an adverse judgment upon a petition for reinstatement filed by or on behalf of the same person.

(8) Attorneys Specially Admitted.

Whenever an attorney applies to be admitted or is admitted to practice before this court for purposes of a particular proceeding (pro hac vice), the attorney shall be deemed thereby to have conferred disciplinary jurisdiction upon this court for any alleged misconduct of that attorney arising in the course of or in the preparation for such proceeding.

(9) Service of Papers and Other Notices.

Service of an order to show cause instituting a formal disciplinary proceeding shall be made by personal service or by registered or certified mail addressed to the respondent-attorney at the address shown in the roll of attorneys of this court or the most recent edition of the Virgin Islands Lawyers Diary and Manual. Service of any other papers or notices required by these Rules

shall be deemed to have been made if such paper or notice is addressed to the respondent-attorney at the address shown on the roll of attorneys of this court or the most recent edition of the Virgin Islands Lawyers Diary and Manual, or to the respondent's attorney at the address indicated in the most recent pleading or other document filed in the course of any proceeding.

(10) *Appointment of Counsel.*

Whenever counsel is to be appointed pursuant to these Rules to investigate allegations of misconduct or prosecute disciplinary proceedings or in conjunction with a reinstatement petition filed by a disciplined attorney, this court may appoint as counsel the disciplinary agency of the Supreme Court of the Virgin Islands, or other disciplinary agency having jurisdiction. If no such disciplinary agency exists or such disciplinary agency declines appointment, or such appointment is clearly inappropriate, this court shall appoint as counsel one or more members of the bar of this court to investigate allegations of misconduct or to prosecute disciplinary proceedings under these Rules; provided, however, that the respondent-attorney may move to disqualify an attorney so appointed who is or has been engaged as an adversary of the respondent-attorney in any matter. Counsel, once appointed, may not resign without permission from the court.

(11) *Payment of Fees and Costs.*

At the conclusion of any disciplinary investigation or prosecution under these Rules, counsel appointed by the court may apply to the court for an order awarding reasonable fees and reimbursing costs expended in the course of such disciplinary investigation or prosecution.

(12) *Duties of the Clerk of the Court.*

(A) Upon being informed that an attorney admitted to practice before this court has been convicted of any crime, the clerk of the court shall determine whether the clerk of the court in which such conviction occurred has forwarded a certificate of such conviction to the court. If a certificate has not been so forwarded, the clerk of the court shall promptly obtain a certificate and file it with this court.

(B) Upon being informed that an attorney admitted to practice before this court has been subjected to discipline by another court, the clerk of the court shall determine whether a certified or exemplified copy of the disciplinary judgment or

order has been filed with this court, and if not, the clerk of the court shall promptly obtain a certified or exemplified copy of the disciplinary judgment or order and file it with this court.

(C) Whenever it appears that any person convicted of any crime, or disbarred, or suspended, or censured, or disbarred on consent by this court, is admitted to practice law in any other jurisdiction or before any other court, the clerk of the court shall, within ten (10) days of that conviction, disbarment, suspension, censure, or disbarment on consent, transmit to the disciplinary authority in such other jurisdiction, or for such other court, a certificate of the conviction or a certified copy of the judgment or order of disbarment, suspension, censure or disbarment on consent, as well as the last known office and residence addresses of the defendant or respondent.

(D) The clerk of the court shall also promptly notify the National Discipline Data Bank operated by the American Bar Association of any order imposing public discipline upon any attorney admitted to practice before this court.

(13) *Jurisdiction.*

Nothing contained in these Rules shall be construed to deny to this court such powers as are necessary for the court to maintain control over proceedings conducted before it, such as proceedings for contempt under Title 18 of the United States Code or under Rule 42 of the Federal Rules of Criminal Procedure.

(14) *Effective Date.*

These Rules shall become effective on July 21, 1992, provided that any formal disciplinary proceeding then pending before this court shall be concluded under the procedure existing prior to the effective date of these Rules.-Adopted July 20, 1992, eff. July 21, 1992.

Rule 84. FORMS

Rule 85. TITLE

Rule 86. EFFECTIVE DATE

Rule 86.1. Effective Date

Local Rules of Civil Procedure

The Local Rules of Civil Procedure of the District Court of the Virgin Islands are adopted this 20th day of July and shall become effective on the 21st day of July 1992.-Amended Feb. 3, 1993.

**LOCAL RULES OF CIVIL PROCEDURE
OF THE
DISTRICT COURT OF THE VIRGIN ISLANDS**

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DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

IN RE:

AMENDMENTS TO THE LOCAL RULES OF
CIVIL PROCEDURE

MISC. NO. 1992/29

O R D E R

Pursuant to Rule 83 Federal Rules of Civil Procedure, and after due consideration by the Court upon recommendation of the Lawyer's Advisory Group that certain amendments be made to the Local Rules of Civil Procedure of the District Court of the Virgin Islands ("Local Rule"), it is hereby;

ORDERED that:

A. A new Rule 6.1 is added:

Rule 6.1 Computation of time

As used in Fed. R. Civ. P. 6(a) and 77(c) "legal holiday" includes New Year's Day, Martin Luther King's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Christmas Day and any other day appointed as a holiday by the President or Congress of the United States or by the Territory of the Virgin Islands. Virgin Islands holidays shall include those enumerated in 1 V.I.C. § 171(a) and any day on which the District Court of the Virgin Islands is closed.

B. LRCi 7.3 is amended by deletion of fourteen (14) days and substitution of twenty-one (21) days therefore.

Rule 7.3 Motion in Limine

All motions *in limine* shall be filed not later than twenty-one (21) days before the day scheduled for jury selection,

absent good cause shown to the district judge or magistrate judge upon a written motion to file out of time.

- C. A new Rule 7.4 is added:

Rule 7.4 Motions for Reconsideration

A party may file a motion asking a judge or magistrate judge to reconsider an order or decision made by that judge or magistrate judge. Such motion shall be filed within ten (10) days after the entry of the order or decision unless the time is extended by the court. Extensions will only be granted for good cause shown. A motion to reconsider shall be based on:

1. intervening change in controlling law;
2. availability of new evidence, or;
3. the need to correct clear error or prevent manifest injustice.

- D. A new Rule 12.1 is added:

Rule 12.1 Dispositive Motions Pursuant to Rule 12

The procedure set out in LRCi 56.1 (a) to (c) and any amendments thereto shall be applicable to all dispositive motions filed pursuant to Fed. R. Civ. P. 12.

- E. LRCi 26.1 is amended by addition of language concerning interrogatory responses:

Rule 26.1 General Provisions, Documents and Production and Interrogatories

All documents in any litigation required to be filed with the court shall be filed pursuant to Rule 5 of the Civil Rules with the following exceptions:

Document production and interrogatory responses.

In responding to a request for document production and in responding to written interrogatories, the party producing the document or responding to the interrogatories shall not file any of the documents or the interrogatory responses with the court. Instead, the party shall file a document indicating the nature of the documents which are being produced in response to each request. Regarding

interrogatory responses, the responding party shall file a notice indicating the date of response and service. Should any party file the actual documents or responses to the interrogatories with the Clerk of Court, the clerk shall return those documents or responses to the interrogatories to the party in question unless a motion to so file has previously been granted by the Court.

- F. LRCi 33.1 is amended by deletion of the following language from the second sentence:

...file the original answer with the Clerk of Court and serve all counsel..., and insertion of the following language in its stead:

...return the original to the party that propounded such interrogatories with copies served on all counsel...

Accordingly, LRCi 33.1 will be as follows:

LRCi 33.1 Interrogatories

Interrogatories shall be prepared in such a fashion that sufficient space for insertion of the answer is provided after each interrogatory or subsection thereof. The answering party shall insert answers on the original interrogatories served on him/her and return the original to the party that propounded such interrogatories with copies served on all counsel. If insufficient space exists on the original for insertion of answers, the answering party shall retype the questions and answers, to ensure that each answer follows the question or subsection thereof.

- G. LRCi 56.1 (a)(3) is amended by addition of language concerning service as follows:

LRCi 56.1 Summary Judgment and Other Dispositive Motions

After the motion has been addressed by all parties and is ready for submission to the Court, the movant shall file a cover letter and all original papers received from all parties with the Clerk (with one copy of each for the district judge's law clerk), and shall serve copies of the cover letter and submitted papers on all parties. The cover letter shall list separately each document being filed.

H. A new Rule 56(a)(4) is added.

Rule 56(1)(4)

If no opposition to the motion has been filed within five (5) days of the time period stated in this Rule and any extensions thereof, the movant shall certify that no response has been received and file such certification and all papers with the Clerk of Court in accordance with Section (a)(3) of this Rule.

It is further:

ORDERED that, due to the immediate need for these amended rules, the foregoing amendments to the Local Rules shall become effective as of March 20, 2000 and, to extent practicable, shall apply to all cases then pending in the District Court of the Virgin Islands. See LRCi 1.1(d). It is further;

ORDERED that the public and members of the bar are hereby given notice and opportunity to comment, as required by 28 U.S.C. § 2071(e). Such comment may be submitted to the Clerk of Court in writing or may be made orally at public hearings at the District Court on April 28, 2000 at 10:00 A.M. on St. Croix and 2:00 P.M. on St. Thomas. These amendments will take effect on March 20, 2000 and will remain in effect unless modified as a result of such comment from the public and bar.

ENTER:

Dated: March 8, 2000

_____/s/_____
RAYMOND L. FINCH
CHIEF JUDGE

Dated: March 3, 2000

_____/s/_____
THOMAS K. MOORE
DISTRICT JUDGE

ATTEST:
ORINN ARNOLD
Clerk of Court

By: Frank Blackman
Deputy Clerk