

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

Effective May 3, 1993

Amendments effective October 31, 2000

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

I. Scope, Purpose, and Construction

Rule 1. SCOPE

Rule 1.1. Scope of Rules

(a) Title and Citation. These Rules shall be known as the Local Rules of Criminal Procedure of the District Court of the Virgin Islands of the United States. They shall be cited as "LRCr ____."

(b) Effective date. These rules become effective May 3, 1993.

(c) Scope of Rules. These Rules shall apply in all proceedings in criminal actions.

(d) Relationship to Prior Rules; Action Pending on Effective Date. These Rules supersede all previous criminal rules promulgated by this court after they take effect. They shall govern all applicable criminal proceedings pending at the time they take effect, except to the extent that in the opinion of the court their application would not be feasible or would work injustice, in which event the former rules shall govern.

(e) Rule of Construction and Definitions. United States Code, Title 1, sections 1 to 5, shall, as far as applicable, govern the construction of these rules.--Adopted April 27, 1993, eff. May 3, 1993.

Rule 1.2. Relationship to Local Rules of Civil Procedure

In cases of general procedure not covered by these Local Rules of Criminal Procedure, the Local Rules of Civil Procedure shall apply.--Adopted April 27, 1993, eff. May 3, 1993.

Rule 2. PURPOSE AND CONSTRUCTION

II. Preliminary Proceedings

Rule 3. THE COMPLAINT

Rule 4. ARREST WARRANT OR SUMMONS UPON COMPLAINT

Rule 5. INITIAL APPEARANCE BEFORE THE MAGISTRATE

Rule 5.1. PRELIMINARY EXAMINATION

Rule 5.2 Appearance Before the Marshal [Deleted.]

Rule 6. THE GRAND JURY

Rule 7. THE INDICTMENT AND THE INFORMATION

Rule 8. JOINDER OF OFFENSES AND OF DEFENDANTS

Rule 9. WARRANT OR SUMMONS UPON INDICTMENT OR INFORMATION

IV. Arraignment, and Preparation for Trial

Rule 10. ARRAIGNMENT

Rule 11. PLEAS

Rule 11.1. **Application to Plead Guilty and Plea Agreements**

(a) All plea agreements and applications to enter pleas of guilty shall be in writing and filed with the Clerk of the Court five (5) working days before the Monday of the trial period for which the case is set. (Application is local Form 1.)

(b) The Court, under exceptional circumstances or where the interest of justice would best be served, may exercise its discretion (i) to accept a written plea agreement or an application to enter a plea of guilty within the five-day period preceding the trial period for which the case is set or (ii) to allow a defendant to enter a guilty plea without a written plea agreement or written application to enter a plea of guilty at any time during the pendency of the case.--Adopted April 27, 1993, eff. May 3, 1993.

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Rule 14. RELIEF FROM PREJUDICIAL JOINDER

Rule 15. DEPOSITIONS

Rule 16. DISCOVERY AND INSPECTION

**Rule 16.1. Disclosure of Personnel Records of
Law Enforcement Agents**

(a) Upon request of the defendant after articulating a reasonable basis for the belief that a particular law enforcement officer's personnel and/or internal affairs file may contain discoverable information, * the government shall proceed as follows:

* *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972), and their progeny including *United States v. Joseph*, 996 F.2d 36 (3d Cir. 1993).

(1) Local Personnel Records.

The United States Attorney shall request that the Attorney General of the Virgin Islands search for and review all personnel and internal affairs files of such local, non-federal, law enforcement personnel, past or present, and report the results of such search and review to the United States Attorney for the District of the Virgin Islands, or directly to the District Court as provided by this rule. The report shall contain the substance of all disciplinary reports; citizen complaints; departmental and/or agency complaints including any disposition; medical and/or psychological information which could reasonably bear on the officer's ability to observe, perceive or relate events, or which could affect such officer's credibility; positive drug and/or alcohol testing results; criminal charges whether prosecuted or not; the substance of all internal affairs

investigative files including all allegations and dispositions; all misconduct, complaints and reports; any other acts and information, whether substantiated or not, which could reasonably bear on the officer's credibility or character for truthfulness. If the Attorney General of the Virgin Islands or the United States Attorney believes that portions of the information contained in the report should not be disclosed, either one or both may request an ex parte, in camera review of the information by the Court pursuant to Fed. R. Crim P. 16 (d) (1).

(2) Federal Personnel Records.

The United States Attorney shall request that the in house counsel of the federal agency search for and review all personnel and internal affairs files of such federal law enforcement personnel, past or present, and report the results of such search and review to the United States Attorney for the District of the Virgin Islands, or directly to the District Court as provided by this rule. The report shall contain the substance of all disciplinary reports; citizen complaints; departmental and/or agency complaints including any disposition; medical and/or psychological information which could reasonably bear on the employee's ability to observe, perceive or relate events, or which could affect such person's credibility; positive drug and/or alcohol testing results; criminal charges whether prosecuted or not; the substance of all internal affairs investigative files including all allegations and dispositions; all misconduct, complaints and reports; any other acts and information, whether substantiated or not, which could reasonably bear on the person's credibility or character for truthfulness. If the federal agency or the United States Attorney believes that portions of the information contained in the report should not be disclosed, either one or both may request an ex parte, in camera review of the information by the Court pursuant to Fed. R. Crim P. 16 (d) (1).

(3) Information to be Disclosed.

The United States Attorney shall disclose such information from the report as may be material to the preparation of the defendant's defense, subject to any protective order issued by the Court.

(4) In the Absence of Discloseable Information.

If the search and review of the respective records reveals nothing to be reported or submitted for in camera review by the Court, then a report shall be filed stating that a search was conducted, the extent of the search and that there was no information which would be material to the preparation of the defendant's defense.--Adopted March 10, 1994, eff. March 10, 1994.

Rule 17.1.1. Pretrial Conference

(a) A pretrial conference shall be held by the presiding judge or magistrate judge in all felony cases unless waived at the discretion of the court.

(b) The pretrial conference shall be scheduled not more than ten (10) days before the deadline to file motions, but not less than five (5) days before that deadline. Counsel for both parties shall be present at the conference with the judge and shall be prepared to discuss pretrial issues, including discovery.--Adopted April 27, 1993, eff. May 3, 1993.

V. Venue

Rule 18. PLACE OF PROSECUTION AND TRIAL

Rule 19. [RESCINDED.]

Rule 20. TRANSFER FROM THE DISTRICT FOR PLEA AND SENTENCE

Rule 21. TRANSFER FROM THE DISTRICT FOR TRIAL

Rule 22. TIME OF MOTION TO TRANSFER

Rule 23.1. Jury Trial in Criminal Cases; Demand

Demand for jury trial shall be made by a defendant or by the United States Attorney at the time of the arraignment of the defendant. Such a demand, if made, shall be noted upon the criminal docket by the clerk on the day upon which it is made. Once a jury trial is demanded, it may be waived by the defendant if consented to by the court and the United States Attorney.--Adopted April 27, 1993, eff. May 3, 1993.

Rule 24. TRIAL JURORS

Rule 25. JUDGE; DISABILITY

Rule 26. TAKING OF TESTIMONY

Rule 26.1. DETERMINATION OF FOREIGN LAW

Rule 26.2. PRODUCTION OF STATEMENT OF WITNESSES

Rule 27. PROOF OF OFFICIAL RECORD

Rule 28. INTERPRETERS

Rule 28.1. Interpreters

The prosecuting attorney or defense counsel must determine if an interpreter is needed for a defendant's court appearance. All requests for interpreting services must be made to the Court at least two (2) days before the defendant's appearance in court. The Court will appoint the interpreter in all appointed cases and provide for the interpreter's compensation. Retained counsel will provide for their own interpreter, to be chosen from a list to be maintained by the Clerk of Court.--Adopted April 27, 1993, eff. May 3, 1993.

Rule 29.1. CLOSING ARGUMENT

Rule 30. INSTRUCTIONS

Rule 31. VERDICT

Rule 32.01 Pre-sentence Report and Sentencing Hearing

- a. Not less than fifty (50) calendar days before the date set for sentencing - unless the Defendant waives or otherwise objects to the minimum period - the probation officer shall disclose the pre-sentence investigation report ["PSI Report"] to the Defendant, the Defendant's counsel, and the attorney for the government. The Court may, in individual cases, direct that the probation officer not disclose the probation officer's recommendation, if any, on the sentence.

- b. Within twenty one (21) calendar days thereafter, unless extended due to post-trial motions or other good cause, the parties shall communicate to the probation officer, and to each other, any objections they may have as to any material information, sentencing classifications, sentencing guideline ranges and policy statements contained in or omitted from the report. Such communication may be oral or written, but the probation officer may require that any oral objection be promptly confirmed in writing. After receiving counsel's objections, the probation officer shall conduct any further investigation and make any revisions to the pre-sentence report that may be necessary.
- c. (Pre-sentence Conference - Only if required). If disputed factors cannot be resolved informally, the probation officer shall coordinate a pre-sentence conference. This conference should be held within 7 days.
- d. Within 15 days, counsel for the Defendant and the Government shall file a written document entitled, "Position of Parties with Respect to Sentencing Factors" which shall be submitted to the sentencing judge with a copy provided to the United States Probation Office and opposing counsel. This document should state that the party adopts the PSI Report, or detail the party's position as to any disputed factors or facts, including application of the guidelines or any alleged inaccuracies in the PSI Report. When there are disputed factors or facts, the document should also state what evidence, including written submissions or witnesses, the aggrieved party wishes to present at the sentencing hearing. It should include a written statement certifying that the party has conferred with opposing counsel and the probation officer in a good faith effort to resolve any disputed matters. The parties shall also confer with respect to the anticipated length of the sentencing and the number of witnesses to be called.
- e. Not later than five (5) business days before the sentencing hearing, the probation officer must submit the pre-sentence report to the Court, together with an

addendum setting forth any unresolved objections, the grounds for those objections, the probation officer's comments on the objections and the written memoranda stating the position of the parties with respect to the unresolved objections. At the same time, the probation officer must furnish the revisions of the pre-sentence report and the addendum to the Defendant, the Defendant's counsel, and the attorney for the government.

- f. Except with regard to any objection made under the subdivision (a) that has not been resolved, the revised PSI Report may be accepted by the Court as accurate. Any objections, not presented to the probation officer as provided by this rule, will not be considered or will be deemed to have been waived. The Court, however, for good cause shown, may allow a new objection to be raised at any time before the imposition of sentence. In resolving disputed issues of fact, the Court may consider any reliable information presented by the probation officer, the Defendant or the attorney for the government.
- g. Within its sole discretion and in appropriate cases, the Court may issue tentative findings and give the parties an opportunity to respond in advance of the sentencing hearing.
- h. The times set forth in this rule may be modified by the Court for good cause shown, except that the 50 day period set forth in subsection (a) may be diminished only with the consent of the Defendant.
- i. The PSI Report shall be deemed to have been disclosed:
 - (1) When a copy of the report is physically delivered;
 - (2) one day after the report's availability for inspection is orally communicated; or
 - (3) three days after a copy of the report or notice of its availability is mailed.
- j. Allowance is made for expedited sentencing based either on a shortened pre-sentence investigation report or the pretrial service report. In such instances, each party

shall promptly file a statement indicating no objections to the report being relied upon.

(As amended October 6, 2000, eff. October 31, 2000).

HISTORY

AMENDMENTS-2000. Amended to conform to amendments made to Rule 32 Federal Rules of Criminal Procedure. The amended rules significantly alter the time periods previously in use and have other significant changes.

Rule 32.02 Sentencing Hearing

At the sentencing hearing, the Court must afford counsel for the Defendant and for the government an opportunity to comment on the probation officer's determinations and on other matters relating to the appropriate sentence, and must rule on any unresolved objections to the PSI Report. The Court may, in its discretion, permit the parties to introduce testimony or other evidence on the objections. For each matter controverted the Court must make either a finding on the allegations or a determination that no finding is necessary because the controverted matter will not be taken into account in, or will not affect, sentencing. A written record of these findings and determinations must be appended to any copy of the pre-sentence report made available to the Bureau of Prisons.

The Court shall also:

1. Determine that the Defendant's counsel or, when the Defendant is acting *pro se*, the Defendant has had the opportunity to read the PSI Report made available pursuant to 32.01(a).
2. Afford counsel for the Defendant an opportunity to speak on behalf of the Defendant.
3. Address the Defendant personally and determine if the Defendant wishes to make a statement and to present any information in mitigation of the sentence, and
4. Afford the victim, where appropriate, an opportunity to be heard. The attorney for the government shall have an equivalent opportunity to be heard. The victim shall have an

opportunity to speak, in accordance with guidelines established by the Court. Upon a motion that is jointly filed by the Defendant and the attorney for the government, the Court may hear *in camera* such a statement by the Defendant, counsel for the Defendant, or the attorney for the government.

5. After imposing sentence in a case which has gone to trial on a plea of not guilty, the Court must advise the Defendant of the Defendant's right to appeal. After imposing sentence in any case, the Court must advise the Defendant of any right to appeal the sentence, and of the right of a person who is unable to pay the cost of an appeal to apply for leave to appeal *in forma pauperis*. If the Defendant so requests, the clerk of the Court must immediately prepare and file a notice of appeal on behalf of the Defendant.

(Added October 6, 2000, eff. October 31, 2000).

HISTORY

AMENDMENTS-2000. Added to conform to amendments made to Rule 32 Federal Rules of Criminal Procedure. The amended rules significantly alter the time periods previously in use and have other significant changes.

FORMS

Consent to institute a presentence investigation and disclose the report before conviction or plea of guilty, see Form 3.

Rule 32.1. REVOCATION OR MODIFICATION OF PROBATION
OR SUPERVISED RELEASE

Rule 33. NEW TRIAL

Rule 34. ARREST OF JUDGMENT

Rule 35. CORRECTION OF SENTENCE

Rule 35.1 Correction or Reduction of Sentence

- a. The Court may correct an illegal sentence imposed pursuant to Virgin Islands law, or the Court may reduce a sentence upon motion filed within 120 days after the sentence is

- imposed or probation is revoked, or within 120 days after entry or any order or judgment of the Supreme Court denying review of, or having the effect of upholding, a judgement of conviction or probation revocation. The Court shall determine the motion within a reasonable time. Changing a sentence from a sentence of incarceration to a grant of probation shall constitute a permissible reduction of sentence under this subdivision.
- b. The Court may reduce a sentence without motion within one hundred twenty (120) days after the sentence is imposed or probation is revoked, or within one hundred twenty (120) days after receipt by the Court of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or within one hundred twenty (120) days after entry of any order or judgment of the Supreme Court denying review of, or having the effect of upholding, a judgment of conviction or probation revocation.
 - c. The Court, on the motion of the Government made within one year after the imposition of the sentence, may reduce a sentence to reflect a Defendant's subsequent substantial assistance in the investigation or prosecution of another person who has committed an offense, in accordance with the guidelines and policy statements issued by the Sentencing Commission pursuant to Title 28 § 994 United States Code. The Court may consider a government motion to reduce a sentence made one year or more after imposition of the sentence where the Defendant's substantial assistance involves information or evidence not known by the Defendant until one year or more after imposition of sentence. The Court's authority to reduce a sentence under this subsection includes the authority to reduce such sentence to a level below that established by statute as a minimum sentence. The Court shall determine the motion within a reasonable time.
 - d. For Virgin Islands statutory offenses, changing a sentence from a sentence of incarceration to a grant of probation shall constitute a permissible reduction of sentence under this subdivision.
 - e. The Court acting within seven (7) days after the imposition of sentence, may correct a sentence that was imposed as a result of arithmetical, technical, or other clear errors.
 - f. The United States Probation Office shall promulgate policies and procedures with respect to the implementation of this rule.

- g. The Court shall monitor the adequacy of existing procedures for the correction or reduction of sentences promulgated under this Order and make such modifications as the Court deems appropriate.

(As amended October 6, 2000, eff. October 31, 2000).

HISTORY

AMENDMENTS-2000. Amended and subsection (c) (d) (e) (f) and (g) added to conform to amendments made to Rule 35 Federal Rules of Criminal Procedure.

Rule 36. Clerical Mistakes

VIII. APPEAL

Rule 37. [ABROGATED.]

Rule 38. STAY OF EXECUTION

Rule 39. [ABROGATED.]

IX. *Supplementary and Special Proceedings*

Rule 40. COMMITMENT TO ANOTHER DISTRICT

Rule 41. SEARCH AND SEIZURE

Rule 42. CRIMINAL CONTEMPT

X. GENERAL PROVISIONS

Rule 43. PRE-SENTENCE OF THE DEFENDANT

Rule 43.1. Presence of the Defendant

Counsel representing a person accused of a criminal offense in the District Court of the Virgin Islands has the responsibility of notifying the defendant to appear before the Court, unless the defendant is in custody. The Court and the United States Marshal will no longer be involved in arranging for a defendant's presence in court, except when the defendant is in custody. If a defendant who is on release does not appear for a hearing on a

question of law, the matter will be heard in his/her absence and the defendant shall be considered to have waived the right to be present. If a defendant does not appear for arraignment, for change of plea, for jury selection, for return of a verdict, or for sentencing, defense counsel will be required to show how the defendant was notified of the court appearance, and the Court will then take whatever action is appropriate.--Adopted March 10, 1994, eff. March 10, 1994.

Rule 44. RIGHT TO AND ASSIGNMENT OF COUNSEL

Rule 44.1. Appointment and Compensation of Counsel

(Approved by the Judicial Council of the Third Circuit Court of Appeals on March 1, 1999)

This Rule follows the plan of the District Court of the Virgin Islands promulgated to implement the Criminal Justice Act of 1964 (18 U.S.C. § 3006A), as amended by the Act of October 14, 1970 (P.L. 91-447, 91st Cong., 84 Stat. 916), and shall be construed in harmony with that Plan. The plan which was adopted for the adequate defense of persons otherwise financially unable to obtain adequate representation is set out hereafter:

CRIMINAL JUSTICE ACT PLAN

I. AUTHORITY

Pursuant to the Criminal Justice Act of 1964, as amended, (CJA), section 3006A of Title 18 United States Code and the GUIDELINES FOR THE ADMINISTRATION OF THE CRIMINAL JUSTICE ACT, Volume VII, GUIDE TO JUDICIARY POLICIES AND PROCEDURES (CJA Guidelines), the judges of the United States District Court for the District of United States Virgin Islands, adopt this Plan for furnishing representation in federal court for any person financially unable to obtain adequate representation in accordance with the CJA.

II. STATEMENT OF POLICY

A. Objectives.

1. The objective of this Plan is to attain the ideal of equality before the law for all persons. Therefore, this Plan shall be administered so that those accused

of crime, or otherwise eligible for services pursuant to the CJA, will not be deprived, because they are financially unable to pay for adequate representation, of any element of representation necessary to an adequate defense.

2. The further objective of this Plan is to particularize the requirements of the CJA, the Anti-Drug Abuse Act of 1988 (codified in part at section 848(q) of title 21, United States Code), and the CJA Guidelines in a way that meets the needs of this district.

B. Compliance.

1. The court, its clerk, the Federal Public Defender Organization, and private attorneys appointed under the CJA shall comply with the CJA Guidelines approved by the Judicial Conference of the United States and/or its Committee on Defender Services and with this Plan.

2. Each private attorney shall be provided by the clerk of court with a then current copy of this Plan upon the attorney's first appointment under the CJA or designation as a member of the Panel of Private Attorneys under the Criminal Justice Act (CJA Panel). The clerk shall maintain a current copy of the CJA guidelines for the use of members of the CJA Panel and shall make known to such attorneys its availability.

III. DEFINITIONS

A. "Representation" includes counsel and investigative, expert, and other services.

B. "Appointed attorney" includes private attorneys, the federal public defender and staff attorneys of the Federal Public Defender Organization.

IV. PROVISION OF REPRESENTATION

A. Circumstance.

1. Mandatory. Representation shall be provided for any financially eligible person who:
 - a. is charged with a felony or with a Class A misdemeanor;
 - b. is a juvenile alleged to have committed an act of juvenile delinquency as defined in section 5031 of title 18, United States Code;
 - c. is charged with a violation of probation, or faces a change of a term or condition of probation (unless the modification sought is favorable to the probationer and the government has not objected to the proposed change);
 - d. is under arrest, when such representation is required by law;
 - e. is entitled to appointment of counsel in parole proceedings;
 - f. is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;
 - g. is subject to a mental condition hearing under chapter 313 of title 18 United States Code;
 - h. is in custody as a material witness;
 - i. is seeking to set aside or vacate a death sentence under sections 2254 or 2255 of title 28, United States Code;
 - j. is entitled to appointment of counsel in verification of consent proceedings pursuant to a transfer of an offender to or from the United States for the execution of a penal sentence under section 4109 of title 18, United States Code;
 - k. is entitled to appointment of counsel under the Sixth Amendment to the Constitution; or

1. faces loss of liberty in a case and federal law requires the appointment of counsel.

2. Discretionary. Whenever a judge or United States magistrate judge determines that the interests of justice so require, representation may be provided for any financially eligible person who:

a. is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized;

b. is seeking relief, other than to set aside or vacate a death sentence under sections 2241, 2254, or 2255 of title 28, United States Code;

c. is charged with civil or criminal contempt who faces loss of liberty;

d. has been called as a witness before a grand jury, a court, the Congress, or a federal agency or commission which has the power to compel testimony, and reason to believe, either prior to or during testimony, that the witness could be subject to a criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty;

e. is proposed by the United States attorney for processing under a pretrial diversion program;

f. is held for international extradition under chapter 209 of title 18, United States Code.

Representation may also be furnished for financially eligible persons in ancillary matters appropriate to the proceedings pursuant to subsection (c) of the CJA.

B. When Counsel Shall Be Provided.

Counsel shall be provided to eligible persons as soon as feasible after they are taken into custody, when they appear before a magistrate judge or judge, when they are formally charged or notified of charges if formal charges are sealed,

or when a magistrate judge or judge otherwise considers appointment of counsel appropriate under the CJA, whichever occurs earliest.

C. Number and Qualifications of Counsel.

1. Number. More than one attorney may be appointed in any case determined by the court to be extremely difficult. In a capital case, the following applies:

a. Federal Capital Prosecutions. Pursuant to 18 U.S.C. Section 3005, a person charged with a federal capital offense is entitled to the appointment of two attorneys, at least one of whom shall be learned in the law applicable to capital cases. Pursuant to 21 U.S.C. Section 848(q)(4), if necessary for adequate representation, more than two attorneys may be appointed to represent a defendant in such a case.

b. Habeas Corpus Proceedings. Pursuant to 21 U.S.C. Section 848(q)(4), a financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. Section 2254 or 2255 is entitled to appointment of one or more qualified attorneys. Due to the complex, demanding, and protracted nature of death penalty proceedings, judicial officers should consider appointing at least two counsel.

2. Qualifications. Qualifications for appointed counsel shall be determined by the court. In capital cases, the following also applies:

a. Appointment of Counsel Prior to Judgment. Pursuant to 21 U.S.C. Section 848(q)(5), at least one of the attorneys appointed must have been admitted to practice in the court in which the case will be prosecuted for not less than five years, and must have not had less than three years experience in the actual trial of felony prosecutions in that court. Pursuant to 18 U.S.C. Section 3005, at least one of the attorneys

appointed must be knowledgeable in the law applicable to capital cases.

Pursuant to 18 U.S.C. Section 3005, in appointing counsel in federal capital prosecutions, the court shall consider the recommendation of the federal public defender or, if no such organization exists in the district, of the Administrative Office of the United States Courts.

b. Appointment of Counsel After Judgment.

Pursuant to 21 U.S.C. Section 848(q)(6), at least one of the attorneys appointed must have been admitted to practice in the court of appeals for not less than five years, and must have had not less than three years experience in the handling of appeals in felony cases in court.

c. Attorney Qualification Waiver. Pursuant to 21 U.S.C. Section 848(q)(7), the presiding judicial officer, for good cause, may appoint an attorney who may not qualify under 21 U.S.C. Section 848(q)(5) or (q)(6), but who has the background, knowledge, and experience necessary to represent the defendant properly in a capital case, giving due consideration to the seriousness of the possible penalty and the unique and complex nature of the litigation.

D. Eligibility for Representation.

1. Fact Finding. The determination of eligibility for representation under the CJA is a judicial function to be performed by a federal judge or magistrate judge after making appropriate inquiries concerning the person's financial condition.

2. Disclosure of Change in Eligibility. If, at any time after appointment, counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with his or her representation, and the source of the attorney's information is not protected

as a privileged communication, counsel shall advise the court.

V. FEDERAL PUBLIC DEFENDER ORGANIZATION

A. Recognition of Existing Organization.

1. The Federal Public Defender Organization of the United States District of the Virgin Islands, previously established in this district pursuant to the provisions of the CJA, is hereby recognized as the Federal Public Defender Organization for this district.

2. The Federal Public Defender Organization shall be capable of providing legal services throughout the district and shall maintain an office in St. Thomas and St. Croix, Virgin Islands.

B. Supervision of Defender Organization. The federal public defender shall be responsible for the supervision and management of the Federal Public Defender Organization. Accordingly, the federal public defender shall be appointed in all cases assigned to that organization for subsequent assignment to staff attorneys at the discretion of the federal public defender.

VI. PRIVATE ATTORNEYS

A. Establishment of CJA Panel. Concurrent herewith, there is instituted a plan for creation of a regular CJA panel of attorneys (App. II); that plan is hereby recognized.

B. Organization. The Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act is found at Appendix II of this CJA Plan.

C. Ratio of Appointments. Where practical and cost effective, private attorneys from the CJA Panel shall be appointed in a substantial proportion of the cases in which the accused is determined to be financially eligible for representation under the CJA.

VII. DUTIES OF APPOINTED COUNSEL

A. Standards. The services to be rendered a person represented by appointed counsel shall be commensurate with those rendered if counsel were privately employed by the person.

B. Professional Conduct. Attorneys appointed pursuant to the CJA shall conform to the highest standards of professional conduct, including but not limited to the provisions of the American Bar Association's MODEL RULES OF PROFESSIONAL CONDUCT, and other standards for professional and ethical conduct adopted by the District and/or Circuit Court.

C. No Receipt of Other Payment. Appointed counsel may not require, request, or accept any payment or promise of payment or any other valuable consideration for representation under the appointment, unless such payment is approved by order of the court.

D. Continuing Representation. Once counsel is appointed under the CJA, counsel shall continue the representation until the matter, including appeals or review by certiorari; proceedings relating to revocation of supervised release, parole and/or probation is closed; until substitute counsel has filed a notice of appearance; until an order has been entered allowing or requiring the person represented to proceed *pro se* or until the appointment is terminated by court order.

VIII. DUTIES OF LAW ENFORCEMENT AND RELATED AGENCIES

A. Presentation of Accused for Appointment of Counsel. Federal law enforcement and prosecutorial agencies, probation officers, and pretrial services officers in this district, and those acting on their behalf, shall promptly ask any person who is in custody, or who otherwise may be entitled to counsel under the CJA, whether he or she is financially able to secure representation, and shall, in such cases in which the person indicates that he or she is not able, arrange to have the person promptly presented before a magistrate judge or judge of this court for determination of financial eligibility and appointment of counsel.

B. Pretrial Services Interview. Prior to the initial appearance, any person held in custody and to be interviewed by pretrial services shall be informed by pretrial services of his or her rights as an accused. Such information shall include but not be limited to that which is contained on Pretrial Services PS Form 1 (Rev. 9/90) "Notice To Defendants", attached as Appendix I and incorporated herein, with modification.

C. Notice of Indictment or Criminal Information. Upon the return or unsealing of an indictment, the filing of a criminal information, or the filing of a petition to modify or revoke probation or supervised release, the United States attorney or the probation officer, as appropriate, immediately shall mail or otherwise deliver a copy of the document to appointed counsel and the defendant, or to the defendant if he is without counsel, at the address shown on defendant's bond papers or to the jail in which the defendant is incarcerated.

IX. MISCELLANEOUS

A. Forms. Standard forms, pertaining to the CJA and approved by the Judicial Conference of the United States or its Committee on Defender Services and prescribed and distributed by the Director of the Administrative Office of the United States Courts, shall be used, where applicable, in all proceedings under this Plan.

B. Claims. Claims for compensation of private attorneys providing representation under the CJA shall be submitted on the appropriate CJA form, to the office of the clerk of the court. That office shall review the claim form for mathematical and technical accuracy and for conformity with the CJA Guidelines, claim form for the consideration of the appropriate judge or magistrate judge exert its best effort to avoid delays in reviewing payment vouchers processing.

C. Supersession. This Plan supersedes all prior Criminal Justice Act Plans of this court.

X. EFFECTIVE DATE.

This Plan shall become effective when approved by the

Judicial Council of the Third Circuit.

**ENTER FOR THE COURT:
ON OCTOBER 8, 1998**

/s/ THOMAS K. MOORE
CHIEF JUDGE, DISTRICT COURT

**APPROVED BY THE JUDICIAL
COUNCIL OF THE CIRCUIT:
ON MARCH 1, 1999**

/s/ EDWARD R. BECKER
CHIEF JUDGE, COURT OF APPEALS
FOR THE THIRD CIRCUIT

APPENDICES:

- I. PS Form 1 (Rev. 9/90) Notice To Defendants.
- II. Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act.

APPENDIX I

PS I
(Rev. 9/90)

NOTICE TO DEFENDANTS

I, _____, am being asked questions about myself by a Pretrial Services Officer. I will not be questioned about the charges, and I should avoid talking about them at this time. I understand that I am under no obligation to give any information and do not have to answer any questions.

Any answers to these questions will be used by the court to decide whether I will be released or kept in jail pending my trial, and whether I will have to take part in drug or alcohol treatment programs. The information will be made available in court to my attorney and the prosecuting attorney.

The information that I give may not be used against me to decide whether or not I am guilty except with respect to charging me with perjury or making a false statement or for failure to appear if I am released in this case.

If I am found guilty, either after trial or after pleading guilty, the information that I provide will be made available to a U.S. Probation Officer for the purpose of preparing a presentence report and may affect my sentence. For instance, information about drug use, prior criminal conduct, money or property received from criminal conduct, or information given by me that is shown to be false may increase my sentence.

I know I have the right to speak with a lawyer before answering any questions. If I cannot afford a lawyer, one will be appointed to represent me during questioning. Asking for a lawyer will not hurt my chance for pretrial release. *I understand that the Federal Public Defender's Office urges me to carefully consider whether I should waive my right to a lawyer during questioning. The Federal Public Defender's office usually is appointed in a majority of these cases and is usually available immediately at my bail hearing.*¹

I have read this form, or had it read to me, and I understand my rights.

DATE: _____
DEFENDANT'S SIGNATURE

¹.*Italics indicate modification by CJA Formation Committee.*

I do _____ I do not _____ want a lawyer during questioning.

TIME: _____ A.M. _____ P.M.

PRETRIAL SERVICES OFFICER

NOTES:

APPENDIX II

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF THE VIRGIN ISLANDS

**PLAN FOR THE COMPOSITION, ADMINISTRATION, AND MANAGEMENT
OF THE PANEL OF PRIVATE ATTORNEYS UNDER THE CRIMINAL
JUSTICE ACT**

I. CREATION OF THE REGULAR CJA PANEL

A. There shall be a standing committee consisting of the Magistrate Judge from the St. Thomas Division, the Magistrate Judge from the St. Croix Division and the Federal Public Defender for the District of the Virgin Islands.

B. The standing committee shall solicit applications from the attorneys who are admitted to practice in the District Court of the Virgin Islands and shall compile and review all applications from interested attorneys.

C. The committee shall approve as members of the panel those attorneys it deems qualified based upon the following factors:

1. competence and knowledge (including training);
2. interest and motivation;
3. willingness to make the commitment to the panel

and provide the quality of representation deemed necessary.

D. Final decisions regarding membership on the panel will be made by majority vote of the committee. It is anticipated that the initial panel shall consist of 3-8 members in each division.

E. Panel members shall serve for a period of 24 months unless earlier termination is requested. Panel members may also seek subsequent appointments to the panel.

II. CREATION OF A PENDING APPLICATION LIST

A. A "Pending Application List" shall be established, consisting of lawyers who have applied for membership on the panel and who do not yet possess sufficient skill, knowledge, or experience to be on the CJA panel. Pending final approval of their application, such attorneys may receive training and may serve, without compensation, in a second chair capacity to a panel attorney on a given case, or aspects of a given case, including detention hearings and sentencing proceedings.

B. The Clerk's Office and the standing committee shall maintain the pending application list. Panel attorneys will be advised of the existence of such a list and will be expected to contact the Clerk's Office or a standing committee member obtain the names of people seeking to serve a second chair capacity. The standing committee shall then periodically review the pending application list and make recommendations as to which attorneys should be moved onto the regular panel.

III. ADDING AND REMOVING LAWYERS FROM THE CJA PANEL

A. Additions

1. The standing committee shall monitor the operation of the panel to determine whether it meets the needs of current case load requirements. Additions to the panel shall be made through the approval of new applications and by moving attorneys from the pending applications list to the regular panel. New applications shall be collected by the Clerk's office and referred to the standing committee for periodic review.

2. By majority vote, the committee shall decide which applicants need further training, thereby remaining on the pending application list and which ones are to be on the panel. Final decisions on inclusion will be made by a majority of the standing committee.

B. Suspensions

1. Attorneys who have been suspended or disbarred from a court of any state, territory, commonwealth or possession of the United States and who are the subject of reciprocal discipline in this Court pursuant to Local Rules of Civil Procedure, Rule 83.2, or who are presented for discipline in this Court under other provisions of Local Rule 83.2, shall be suspended from the list pending disposition of the grievance proceedings.

2. If the attorney is counsel of record in a pending case, the trial Judge shall be notified by the Clerk's Office. If the attorney is suspended or disbarred in this Court, the attorney shall be removed from the CJA panel, and will be eligible to reapply only if he or she later becomes a member of the federal bar in good standing.

C. Removals

1. Any complaints about the performance or commitment of a panel attorneys shall be referred to the standing committee. The standing committee shall also take notice of such deficiencies on its own. At the request of any District Judge, the Clerk, or individual committee members, the standing committee shall review complaints about a panel member. The receipt and handling of complaints will be confidential.

2. The panel attorney shall be notified of any complaint, and shall have the right to request a hearing before the committee. At the hearing, the attorney shall have all due process rights, including representation by counsel, the right to be informed of the nature of the complaint and the right to present testimony on his or her behalf. Removal of any

attorney from the panel shall be by majority vote of the standing committee.

IV. APPOINTMENTS

Panel members shall be primarily considered for appointment in those cases in which there are multiple parties requiring separate representation, where the Federal Public Defender has a conflict of interest and where otherwise deemed appropriate by the appointing Judge. To the extent the existing panel is inadequate to provide representation as required, the appointing Judge may then consider the list of all attorneys admitted to practice in the District Court.

Rule 45. TIME

Rule 46. RELEASE FROM CUSTODY

Rule 46.1. Motion for Modification of Conditions

If defendant's attorney or the United States Attorney moves for any modification of conditions such as reporting to probation, or permission to leave the Virgin Islands, the party making the motion must first confer with the opposing party or give reasons for not so conferring. The motion must indicate whether the opposing party has any objection. The opposing party must be served with a copy of the motion at the time of filing.-- Adopted April 27, 1993, eff. May 3, 1993; amended March 10, 1994, eff. March 10, 1994.

Rule 46.2. Appearance Before the Probation Office

A person accused of a criminal offense in the District Court of the Virgin Islands who has been released from custody shall report to the United States Probation Office at 8:00 AM on Wednesday of every week. The Probation Office may give permission to such defendant to report on a different day or at a different hour.

If any such defendant fails to report for two consecutive weeks, the Probation Office shall notify the Court, the United States Marshal, and the United States Attorney. Upon such notification, the United States Marshal shall immediately take the defendant into custody without further order of the Court and

the Magistrate Judge shall schedule a hearing for revocation of release or modification of the conditions of defendant's release. --Adopted March 10, 1994, eff. March 10, 1994.

Rule 47. MOTIONS

Rule 48. DISMISSAL

Rule 49.1. Service to Attorneys Through Clerk's Office Boxes

Attorneys in active practice in the District Court have been 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, including admiralty, civil and criminal cases.--Adopted April 27, 1993, eff. May 3, 1993.

Rule 50. CALENDARS; PLAN FOR PROMPT DISPOSITION

Rule 51. EXCEPTIONS UNNECESSARY

Rule 52. HARMLESS ERROR AND PLAIN ERROR

Rule 53.1. Cameras and Recording Devices

The possession or use of cameras or recording devices is prohibited in the United States courtroom and hallways contiguous thereto or anywhere that a judicial officer is holding a court proceeding. This rule does not apply to court and federal employees performing official duties.--Adopted April 27, 1993, eff. May 3, 1993.

Rule 54. APPLICATION AND EXCEPTION

Rule 55.1. Demand for Records

No confidential records of this court maintained by the probation office, including presentence and probation supervision records, shall be sought by any nonparty applicant except by written petition to this court establishing with particularity the need for specific information in the record.

When a demand for disclosure of presentence and probation records is made to a probation officer of this court, by way of subpoena or other judicial process, the probation officer may file a petition seeking instruction from the court with respect to responding to the subpoena.

Whenever a probation officer is subpoenaed for such records, the officer shall petition this court in writing for authority to release documentary records or produce testimony with respect to such confidential court information. In either event, no disclosure shall be made except upon an order issued by this court, except as permitted by Fed. R. Crim. P. 32.--Adopted April 27, 1993, eff. May 3, 1993.

Rule 56.1. Magistrate Judges

(a) Duties of Magistrate Judges in Misdemeanor Cases

The list of duties set out below is not exclusive, but includes:

(1) Upon the filing of an information or return of an indictment, all misdemeanor cases shall be assigned by the clerk to a Magistrate Judge, who shall proceed in accordance with the provision of 18 U.S.C. § 3401 and Rule 58 of the Federal Rules of Criminal Procedure. Upon the filing of a complaint or violation notice, the Magistrate Judge by whom such complaint or violation is received shall open a Magistrate's docket and proceed with the matter.

(2) Trying persons accused of misdemeanors committed within this District in accordance with 18 U.S.C. § 3401 in jury and non-jury cases. This shall include ordering a presentence investigation report on any such person who is convicted or pleads guilty or nolo contendere, sentencing such person, and determining requests for reduction of sentence of such person.

(3) Taking a plea and imposing sentence upon the transfer of any information or indictment charging a misdemeanor, under Rule 20 of the Federal Rules of Criminal Procedure, if the defendant consents in writing to this procedure.

(4) Conducting proceedings for revocation or modification of probation and supervised release in non-felony cases.

(5) Forfeiture of Collateral in Lieu of Appearance.

(A) In a case involving a petty offense or infraction as defined in 18 U.S.C. § 19, or in suitable types of misdemeanors, except as modified below, a forfeiture of collateral security may be accepted in lieu of appearance as a disposition of the case.

(B) There shall be maintained at each office of the clerk and Magistrate Judge a list of the offenses and fines applicable thereto for which a forfeiture of collateral security may be accepted.

(C) Persons charged with offenses which do not appear on the list must appear for trial. A person who timely tenders the forfeiture of collateral security for an offense listed pursuant to subsection (a) (5) (B) above will not be required to appear for trial by the authority issuing the violation notice.

(D) Amendments and revisions to the list of offenses and fines pursuant to subsection (a) (5) (B) above may be made from time to time by the court.

(b) Other Matters

Magistrate Judges are hereby authorized and directed to perform additional duties pursuant to 28 U.S.C. § 636(b), including but not limited to the following:

(1) Receiving and filing complaints, issuing search warrants, including administrative search warrants upon proper application, and arrest warrants, and receiving their returns; issuing orders for pen registers and trap and trace devices. The contents of all proposed complaints, warrants, pen register orders and trap and trace orders shall be approved by the United States Attorney or a designated Assistant United States Attorney.

(2) Conducting initial appearance and advice of rights proceedings and preliminary examinations (Rule 5 & 5.1, Fed. R. Crim. P. and 18 U.S.C. § 3060).

(3) Conducting all post indictment/post information arraignments, accepting not guilty pleas, and ordering presentence investigation reports in appropriate cases (Rule 10, Fed. R. Crim. P.).

(4) Performing all functions related to appointment and compensation of counsel to indigent persons and the administration of the court's Criminal Justice Act Plan, including authorization of investigators, experts, the maintenance of a register of eligible attorneys, and approval of attorneys compensation and expense vouchers (Rule 44, Fed. R. Crim. P., Local Rule 44.1, and 18 U.S.C. § 3006A).

(5) Admitting defendants to bail and imposing conditions of release or imposing pretrial detention, taking acknowledgments, affidavits and depositions, and performing all functions relating to release and detention, including revocation of release and/or bail (18 U.S.C. §§ 3141-3156).

(6) Receiving grand jury returns, issuing process, including bench warrants, as required, and, on motion of the United States, ordering dismissal of an indictment or any separate count thereof (Rule 6(f) & 48(a) Fed. R. Crim. P.).

(7) Conducting hearings and issuing orders upon motions of the United States Attorney directing or regulating line-ups, photographs, handwriting samples, finger printing, palm printing, voice identification, medical examination, and the taking of blood, urine, fingernail, hair and bodily secretion samples (with appropriate medical safe guards).

(8) Conducting proceedings for commitment to another district (Rule 40, Fed. R. Crim. P.).

(9) Conducting extradition proceedings in accordance with 18 U.S.C. §§ 3181-3185.

(10) Issuing subpoenas, writs of *habeas corpus ad testificandum* and *ad prosequendum*, or other orders necessary

to obtain the presence of parties or witness or evidence needed for court proceedings.

(11) Setting bail for material witnesses (18 U.S.C. § 3144).

(12) Exercising all the powers and duties conferred or imposed by law upon United States Commissioners.

(13) Supervising, hearing and determining pretrial motions and other pretrial matters at a pretrial conference, or otherwise, including, without limitation, motions and orders made pursuant to Rules 8, 12.2(c), 13, 14, 15, 16, 17, 17.1 and 28, Fed. R. Crim. P., as well as under 18 U.S.C. § 4244, orders determining excludable time under 18 U.S.C. § 3161, and orders dismissing a complaint without prejudice for failure to return a timely indictment under 18 U.S.C. § 3162 (28 U.S.C. § 636(b) (1) (A)).

(14) Conducting such evidentiary hearings as are necessary and appropriate and submitting to a District Judge proposed findings of fact, report and recommendations for the disposition of:

(A) Guilty pleas in felony cases with the consent of the defendant, and ordering a presentence investigation report for such defendant (Rules 10, 11(a) and 32(c) Fed. R. Crim. P.) (Local forms 2, 3, 4 and 5)

(B) Motions for revocation or modification of probation and supervised release in felony cases;

(C) Applications for post-trial relief made by persons convicted of criminal offenses, including *habeas corpus* petitions filed under local or federal law, petitions filed by federal prisoners pursuant to 28 U.S.C. §§ 2254 and 2255 and Federal Rules governing section 2254 (and 2255) cases in accordance with the standards and criteria established in 28 U.S.C. § 636(b) (1), and civil suits filed under 42 U.S.C. § 1983, with authority to require responses, issue orders to show cause and such other orders as are necessary to develop a complete record; and

(D) Motions to dismiss or quash an indictment or information made by defendant or to suppress evidence in a criminal case.

(15) Conducting or presiding over the voir dire examination and impanelment of trial juries in civil, and in criminal cases with the consent of the defendant.

(16) Record of Proceedings.

(A) The Magistrate Judge disposing of a case involving a petty offense, as defined in 18 U.S.C. § 3401, shall file with the clerk a record of proceedings prepared on forms, dockets, etc., to be furnished by the Administrative Office of the United States Courts. The record of proceedings, with the original papers attached, shall be filed with the clerk not later than 20 days following the date of final disposition.

(B) All fines collected of collateral forfeited shall be transmitted immediately to the clerk.

(C) In all other cases, as soon as the defendant is discharged or after binding over, is either confined on final commitment or released on bail, except as provided in the court's plan implementing the Criminal Justice Act, the Magistrate Judge is required within 20 days thereafter to transmit to the clerk the file in the case including, if issued or received by the Magistrate Judge, the original complaint, warrant of arrest with the officer's return thereon, temporary and final commitments with returns thereon, and the complete transcript which consists of verbatim copies, carbon or otherwise, of all successive docket entries in the case.

(c) Appeals from judgments and other orders.

(1) Appeals from Judgments in Misdemeanor Cases. A defendant may appeal a judgment of conviction by a Magistrate Judge in a misdemeanor case by filing a notice of appeal with the clerk within ten (10) days after entry of the judgment and by serving a copy of the notice upon the United States Attorney. The scope of review upon appeal shall be the same

as an appeal from a judgment of the District Court to the Third Circuit. See Rule 58(g) of the Federal Rules of Criminal Procedure.

(2) Brief on Appeal to a District Judge. In all appeals under subsection (c)(1) 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 shall place that appeal upon the calendar for hearing.

(3) Review of Magistrate Judge's Proposed Findings, Reports and Recommendations. In any criminal proceedings in which the Magistrate Judge is not authorized to enter a dispositive or final order, but is authorized and directed to file proposed findings of fact, a report and recommendations to a District Judge, a copy of such proposed findings, report and recommendations shall be furnished, upon filing, to the district judge and to all other parties. 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 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. Any party desiring to oppose such objections shall have five (5) days thereafter within which to file and serve a written response. The District Judge may accept, reject, or modify in whole or in part, the proposed findings, report and recommendations of the Magistrate Judge based on the record developed by the Magistrate Judge, making a determination on the basis of that record, or receiving further evidence or recommitting the matter to the Magistrate Judge with instructions.--Adopted April 27, 1993, eff. May 3, 1993.

Explanatory Notes

References in text. The Criminal Justice Act, referred to in subsection (c) (16) (C) is classified to 18 § 3006A.

Cross References

Criminal Justice Act Plan, see Rule 44.1, Local Rules of Criminal Procedure.

Rule 57. RULE BY DISTRICT COURTS

Rule 58. PROCEDURE FOR MISDEMEANOR AND OTHER PETTY OFFENSES

Rule 58.1. Collateral Forfeiture

With respect to certain offenses to be specified in a supplemental order of this court, such offenses being petty offenses as defined by 18 U.S.C., section 1(3), whether original under the applicable federal statute by virtue of the Assimilated Crimes Act, 18 U.S.C., section 13, it is hereby ordered that collateral may be posted in lieu of the appearance of the offender in the amount indicated for the particular offense.

Upon the failure of the person charged with an offense or offenses to appear before the court for trial of the specified offenses, the collateral in the amount specified shall be forfeited to the United States and the posting of said collateral shall indicate that the offender does not contest the charge nor request a hearing before the court. If the collateral is forfeited, such act shall be tantamount to a finding of guilty.

Forfeiture will not be permitted for violations contributing to an accident causing property damage in excess of one hundred dollars (\$100.00) or personal injury or, when in the opinion of the arresting or citing officer or agency, the offense charged is an aggravated offense.

Nothing contained in this rule shall prohibit a law enforcement officer from arresting a person for the commission of any offense, including those for which collateral may be posted and forfeited and requiring the person charged to appear before the court or before a United States magistrate.

The following procedure is hereby established to implement the rule:

(1) Violation notices will be issued by the appropriate law enforcement agency.

(2) Pre-addressed envelopes shall be issued to alleged violators for mailing to the Clerk of the Court, District Court of the Virgin Islands, St. Thomas, Virgin Islands.

(3) Alleged violators shall be instructed that they may post collateral by money order or certified check payable to Clerk of Court, District Court of the Virgin Islands, but not by personal check.

(4) The original violation notice and one copy shall be forwarded to the clerk of court or United States magistrate, as appropriate, within twenty-four (24) hours of issuance, along with the original and one copy of a transmittal letter, which shall be acknowledged and returned to the sender.

(5) Each violation notice shall clearly indicate the citation to the statute or regulation allegedly violated. Failure to indicate the specific citation will result in dismissal of the charge.

(6) Alleged violators shall be advised that if they wish to forfeit collateral, payment must be posted to the clerk within seven (7) days of receipt of the notice of violation and that such payment, when mailed from a place outside the Virgin Islands, shall be by air mail delivery.

(7) The alleged violator shall be advised of the right to appear before the District Court of the Virgin Islands and shall further be advised that forfeiture of collateral will indicate not contest of guilt as to the offense charged. To be given an appearance before the District Court, the alleged violator should check the appropriate box on the notice of violation, clearly indicate name and Virgin Islands address, as well as any other address, and mail the notice of violation without payment of collateral to the clerk. In such cases, both the alleged violator and the issuing law enforcement officer will be informed of the time and date of appearance.

(8) Mandatory appearance violations will be indicated by checking the appropriate box on the notice of violation. The location of the District Court shall be indicated on such notices, along with the time and date for appearance. No monetary amount should be stated on such notices.

(9) Requests for immediate appearance shall be processed as in the case of mandatory appearance violations.

(10) Enforcement procedures for violators who fail to appear or post collateral will, in the court's discretion, include warning letter, summonses and warrants. Law enforcement agencies may be asked to assist in effecting enforcement procedure.

(11) Duplicate copies of notices may be sent to the Virgin Islands Department of Public Safety.

(12) All hearings arising under provisions of these rules shall be heard before the District Court of the Virgin Islands on the first Friday of each month at 9:00 a.m.

(13) The supplemental order in paragraph one (1) of this rule shall include a Schedule of Offenses setting out the monetary amounts of collateral which may be forfeited in lieu of the appearance of the offender in court. The amounts shall be set as the court deems appropriate and the Schedule of Offenses may be modified at the court's discretion. The clerk shall make this Schedule of Offenses available to the public at no charge.--Adopted April 27, 1993, eff. May 3, 1993.

Rule 59. EFFECTIVE DATE

Rule 59.1. Effective Date

The Local Rules of Criminal Procedure are adopted this 27th day of April, 1993 and shall become effective on the 3rd day of May, 1993.--Adopted April 27, 1993, eff. May 3, 1993.

Rule 60. TITLE

Form 1. Application for Permission To Enter Plea of Guilty

DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF _____

UNITED STATES OF AMERICA,

Plaintiff,

Case No. _____

v.

Defendant

APPLICATION FOR PERMISSION TO ENTER PLEA OF GUILTY

I, _____ (Defendant's name), hereby certify as follows:

My full name is _____ and I request that all proceedings against me be held in that name.

2. I understand that the Constitution and laws of the United States guarantee me the right to be represented by a lawyer at every state in these proceedings, including any trial on these charges, and that if I cannot afford to hire a lawyer, the Court will provide one for me.

3. I have a lawyer who is representing me in this proceeding. My lawyer's name is _____. I believe and am satisfied that I have had enough time to discuss this matter with my lawyer.

4. My date of birth is _____. I [am] [am not] married and I have _____ children.

5. English [is] [is not] my native language. My formal education stopped after grade _____. I am presently [unemployed] [employed] as a _____ (occupation).

6. I have taken [no] [the following] drugs or medication within the past twenty-four hours:

I [have] [have not] drunk alcoholic beverages within the past twenty-four hours.

7. I [have] [have never] been a patient in a mental hospital or institution. I [do] [do not] believe that at the present time I am mentally ill or mentally incompetent in any respect.

8. I received a copy of the Complaint (Information) before being called upon to plead. I have read and discussed it with my lawyer. I understand that the substance of the charge(s) against me is that I: ___ (add separate sheets if necessary)

9. I have told my lawyer all the facts and circumstances known to me about the charges set forth in the Complaint (Information).

10. I am satisfied that my lawyer understands the information which I have provided, and that my lawyer has counseled and advised me on the nature of each charge and on all possible defenses that I might have in this case.

11. In addition, my lawyer has explained to me, and I understand, that if I entered a plea of NOT GUILTY (or persisted in my plea of NOT GUILTY), under the Constitution and laws of the United States I would be entitled to a speedy and public trial by a jury of twelve persons on the charges contained in this Indictment (Information).

12. My lawyer has explained to me, and I understand, that at such a trial the jury would be told by the judge that I am presumed to be innocent, and that the Government would be required to prove me guilty of the charges against me beyond a reasonable doubt. I understand that I would not have to prove that I am innocent, and that I could not be convicted unless all twelve jurors voted unanimously for conviction.

13. My lawyer has discussed with me, and I understand, that if I went to trial on these charges, the Government would have to produce in open court the witnesses against me, and that my lawyer could confront and cross-examine them and object to evidence offered by the Government.

14. My lawyer has further explained to me, and I understand, that I have the right to produce witnesses and could offer evidence in my defense at a trial on these charges, and that I would have the right, if I so chose, to testify on my own behalf at that trial; but if I chose not to testify, the jury could draw no suggestion or inference of guilt from that fact.

15. My lawyer has explained to me, and I understand, that if I plead GUILTY to any charge(s) in this Complaint (Information) and the judge accepts my plea, I WAIVE MY RIGHT TO TRIAL AND THE OTHER RIGHTS SET FORTH IN PARAGRAPHS 11, 12, 13 and 14 ABOVE. I am aware and understand that if my Guilty plea is accepted, there will be no trial and a judgment of GUILTY will be entered after which the judge, upon consideration of my presentence report, will impose punishment upon me. I understand that if I plead GUILTY, the judge may impose the same punishment as if I had pleaded "not guilty", went to trial and was convicted by a jury.

16. My lawyer has also explained to me, and I understand, that if I plead GUILTY, I WAIVE THE RIGHT NOT TO INCRIMINATE MYSELF. I understand that the judge will ask me what I did and I will have to acknowledge my guilt as charged by setting forth my actions so that the judge is satisfied that I am, indeed, guilty. I understand that any statements I make at the time I plead GUILTY, if untrue and made under oath, can be the basis of a perjury prosecution against me.

17. My lawyer has informed me, and I understand, that the maximum punishment which the law provides for the offense(s) charged in this Complaint (Information) is: A MAXIMUM OF ___ years imprisonment and a fine of \$___ for the offenses charged in Count(s) ___.

My lawyer has further explained, and I understand, that there is [no] [a] mandatory minimum punishment of ___ years imprisonment and [no] [a] mandatory minimum fine of \$___ for the offenses charged in Count(s) ___.

I understand that if I plead GUILTY to Count(s) ___ of the Complaint (Information), I face a maximum sentence on those counts of ___ years imprisonment, plus an aggregate fine of \$___. My lawyer has additionally explained, and I understand, that in addition to or in lieu of the penalties already discussed, I may be ordered to make restitution to any victim of the offense and that the Court may require me to make restitution to a designated third person or organization instead of the victim. I understand that in determining whether to order restitution and the amount of restitution, the Court will consider the amount of the loss sustained by any victim as a result of the offense, my financial resources, the financial needs and earning ability of my

dependents, and any other factors as the Court deems appropriate.

I understand that I will be assessed \$50.00 for each felony upon which I am sentenced and \$25.00 for each misdemeanor, if any.

18. I hereby declare that no officer or agent of any branch of government, (Federal, State or local), nor my lawyer, nor any other person has made any promise or suggestion of any kind to me, or within my knowledge to any one else, that I will receive a lighter sentence, or probation, or any other form of leniency if I plead GUILTY. My lawyer has explained, and I understand, that only the judge may decide what punishment I shall receive, and that if any person has told me otherwise, that person is not telling me the truth. IF A GUIDELINE CASE, PLEASE ANSWER 18A THROUGH 181. If not, go directly to #19.

18A. I understand that I will be sentenced according to the Sentencing Guidelines pursuant to the Sentencing Reform Act of 1984, since my offense occurred on or after November 1, 1987.

18B. I have discussed with my attorney how these guidelines might apply to my case.

18C. I understand that the Court will not be able to determine the guideline sentence for my case until after the Presentence Report has been completed and both I and the Government have had an opportunity to read the report and challenge any facts reported by the probation officer.

18D. I further understand that after it has been determined which guideline range applies to my case, the judge has the authority to impose a sentence more sever (up to the statutory maximum) or less sever than the sentence called for by the guidelines.

18E. I understand that the Court may be bound to impose a fine in accordance with both statute and the guidelines.

18F. I understand that under some circumstances I or the Government may have the right to appeal any sentence imposed.

18G. I understand that parole has been abolished and if I am sentenced to prison I will not be released on parole.

18H. I further understand that the Court may impose a term of supervised release to follow any term of imprisonment and that any violation of that term of supervised release may result in an additional term of imprisonment.

18I. I understand that I will have no right to withdraw my plea on the ground that anyone's prediction as to the guideline range or expectation of sentence proves inaccurate.

19. I hereby declare that I have not been forced, coerced or threatened in any manner by any person to plead GUILTY to these charges. Nor have I been told that if I refuse to plead GUILTY, other persons will be prosecuted.

20. There [has] [has not] been a plea agreement entered into between me and the United States Attorney by Assistant United States Attorney ____ (name)

[] The plea agreement does not exist in written form.

[] The plea agreement does exist in written form. I have read it, my lawyer has explained it to me and I understand it.

The substance of the plea agreement is: _____

21. My lawyer has explained to me, and I understand, that the terms of the plea agreement might be unacceptable to the judge. If the Judge does not accept the terms of the agreement, I understand that I may withdraw my GUILTY plea or go ahead and plead GUILTY, I understand that the disposition of my case may be less favorable than that proposed in the plea agreement.

22. I believe my lawyer has done all that anyone could do to counsel and assist me, AND I AM SATISFIED WITH THE ADVICE AND HELP MY LAWYER HAS GIVEN ME.

23. I know the judge will not permit anyone to plead GUILTY who claims to be innocent, and with that in mind and because I am GUILTY and make no claim of innocence, I wish to plead GUILTY. I respectfully request that the Court accept my plea of GUILTY and to have the Clerk enter my plea of GUILTY as follows:

To Count(s) ____ of the Complaint (Information).

Form 2. Notice Regarding Entry of a Plea of Guilty

DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF _____

UNITED STATES OF AMERICA,

Plaintiff,

Case No. _____

v.

Defendant

NOTICE REGARDING ENTRY OF A PLEA OF GUILTY

In the event the Defendant decides at any time before trial to enter a plea of guilty, the United States Magistrate Judge is authorized by LRCr 56.1(b) (14) (A), with the consent of the defendant, to conduct the proceedings required by Rule 11 F. R. Cr. P. incident to the making of the plea. If, after conducting such proceedings, the magistrate judge recommends that the plea of guilty be accepted, a presentence investigation and report will be ordered pursuant to Rule 32 F. R. Cr. P. The assigned United States District Judge will then act on the magistrate judge's Report and Recommendation; and, if the plea of guilty is accepted, will adjudicate guilt and schedule a sentencing hearing at which the district judge will decide whether to accept or reject any associated plea agreement, and will determine and impose sentence.

CONSENT

I hereby declare my intention to enter a plea of guilty in the above case, and I request and consent to the United States Magistrate Judge conducting the proceedings required by Rule 11 F. R. Cr. P. incident to the making such plea. I understand that if my plea of guilty is then accepted by the district judge, the district judge will decide whether to accept or reject any plea agreement I may have with the United States, and will adjudicate guilt and impose sentence.

Date: _____

Defendant

Date: _____

Defendant's Attorney

Form 3. Consent to Institute a Presentence Investigation and Disclose the Report Before Conviction or Plea of Guilty

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF _____

UNITED STATES OF AMERICA,

Plaintiff,

Case No. _____

v.

Defendant

Consent to Institute a Presentence Investigation and Disclose the Report Before Conviction or Plea of Guilty

I, ____, hereby consent to a presentence investigation by the probation officers of the District Court of the Virgin Islands. I understand and agree that the report of the investigators will be disclosed to the judge and the attorney for the government, as well as to me and my attorney, so that it may be considered by the judge in deciding whether to accept a plea agreement that I have reached with the government.

I have read, or had read to me, the foregoing consent and fully understand it.

Date: _____

(Signature of Defendant)

Date: _____

(Defendant's Attorney)

Cross References

Presentence report and sentencing hearing, see Rule 32.0.1, Local Rules of Criminal Procedure.

Form 4. Report and Recommendation Concerning Plea of Guilty

DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF _____

United States of America

Case No. _____

v.

REPORT AND RECOMMENDATION CONCERNING PLEA OF GUILTY

The defendant by consent, has appeared before me pursuant to Rule 11 F. R. Cr. P. 11, and LRCr 56.1(b)(14)(A), and has entered a plea of guilty to Count(s) ___ of the indictment/information. After cautioning and examining the defendant under oath concerning each of the subjects mentioned in Rule 11, I determined that the guilty plea(s) was/were knowledgeable and voluntary as to each count, and the offense(s) charged is/are supported by an independent basis in fact containing each of the essential elements of such offense(s). I therefore recommend that the plea(s) of guilty be accepted and that the defendant be adjudged guilty and have sentence imposed accordingly.

Date: _____

United States Magistrate Judge

NOTICE

Failure to file written objections to this Report and Recommendation within ten (10) days from the date of its service shall bar an aggrieved party from attacking such Report and Recommendation before the assigned United States District Judge, 28 U.S.C. § 636(b)(1)(B), LRCr 56.1(c)(3).

Form 5. Acceptance of Plea of Guilty and Adjudication of Guilt

DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF _____

United States of America,

Case No. _____

e.

ACCEPTANCE OF PLEA OF GUILTY AND ADJUDICATION OF GUILT

Pursuant to the Report and Recommendation of the United States Magistrate Judge, to which there has been no timely objection, the plea of guilty of the defendant to the Count(s) ___ of the indictment/information is accepted and the defendant is adjudged guilty of such offense(s). A sentence hearing will be scheduled and conducted pursuant to separate notice.

IT IS SO ORDERED.

DONE and ORDERED this ___ day of _____, _____.
[month] [year]

UNITED STATES DISTRICT JUDGE

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

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