

**VIRGIN ISLANDS
RULES OF APPELLATE PROCEDURE**

Effective November 1, 1998

Amendments received to October 31, 2000

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VIRGIN ISLANDS RULES OF APPELLATE PROCEDURE

Rule 1. Scope of Rules.

(a) **Title and Citation.** These Rules shall be known as the Virgin Islands Rules of Appellate Procedure. They shall be cited as V.I. R. APP. P. in the long form, and VIRAP in the short form.

(b) **Effective Date.** These Rules become effective on November 1, 1998.

(c) **Scope of Rules.** These Rules govern procedure in appeals to the Appellate Division of the District Court of the Virgin Islands ["Appellate Division"] from the Territorial Court of the Virgin Islands ["Territorial Court"].

(d) **Authority for Promulgation of Rules.** These Rules are promulgated pursuant to the authority granted by V.I. CODE ANN. tit. 4, §§ 33 & 34, as enabled by section 23A (a) & (b) of the Revised Organic Act of 1954; 48 U.S.C. § 1613a (a) & (b). The Revised Organic Act of 1954 is found at 48 U.S.C §§ 1541-1645 (1995), *reprinted in* V.I. CODE ANN., Historical Documents, Organic Acts, and U.S. Constitution at 73-177 (1995 & Supp. 1997) (preceding V.I. CODE ANN., tit. 1).

(e) **Relationship to Previous Rules.** These Rules supersede all previous appellate rules applicable to this Court.¹ They shall govern all proceedings pending at the time they take effect. The Court may suspend certain rules as described in Rule 2 when, in the opinion of the Court, their application would not be feasible or would work injustice.

¹ While these Rules draw from the Federal Rules of Appellate Procedure ["FRAP"] and the Local Appellate Rules of the United States Court of Appeals for the Third Circuit, these federal rules no longer have any applicability to the Appellate Division of the District Court of the Virgin Islands.

(f) **References to Clerk of Appellate Division Contemplate Services of Clerk of District Court.** All references to services performed by the Clerk of the Appellate Division contemplate that said services will be performed by the Clerk of the District Court acting in the capacity of the Clerk of the Appellate Division.

Rule 2. Suspension of Rules. In the interest of expediting decision, or for other good cause shown, the Chief Judge of the District Court of the Virgin Islands, the Presiding Judge of an appellate panel, or any appellate panel may suspend the requirements or provisions of any of these Rules in a particular case on their own motion or on application of a party, specifying in an order the procedure required, except that the time for filing a notice of appeal or a request for permission to appeal through certification, out of time, or as otherwise prescribed by law, may only be enlarged pursuant to Rule 5.

Rule 3. Payment of Docket Fees.

(a) **Payment of Docket Fees and Permission to Proceed *In Forma Pauperis*.** All appeals must be accompanied by the appropriate docket fee, unless permission to proceed *in forma pauperis* ["IFP"] has been granted. If a proceeding is docketed without prepayment of the applicable docketing fee, the appellant shall pay the fee within fourteen days after docketing. If the appellant fails to do so and has not filed a motion to proceed IFP accompanied by supporting documents, the Clerk of the Appellate Division is authorized to dismiss the appeal without further notice.

(b) **Appeal *In Forma Pauperis*.** A party to a civil or criminal appeal who desires to proceed on appeal IFP shall file a motion for leave so to proceed, together with an affidavit and other documentation (full financial disclosure), showing, in detail, the party's inability to pay fees and costs or to give security therefor, the party's belief that the party is entitled to redress, and a

statement of the issues which that party intends to present on appeal. Petitions to proceed IFP shall conform with 4 V.I.C. § 513 and will be determined by the Appellate Division. If the motion is granted, the party may proceed without further application and without prepayment of fees or costs in either the Appellate Division or Territorial Court or the giving of security therefor. If the motion is denied, the Appellate Division shall state in writing the reasons for the denial.

(c) ***In Forma Pauperis Status in Criminal Matters.*** In criminal matters, IFP status will continue on appeal if appellant has been permitted to proceed IFP by the Territorial Court as one who is financially unable to obtain adequate defense. IFP status will not be continued if, before or after the notice of appeal is filed, the Territorial Court (or Appellate Division in an appeal of a habeas corpus proceeding) certifies that the appeal is not taken in good faith or finds that the party is otherwise not entitled to continue to proceed IFP, in which event the Territorial Court or Appellate Division shall state in writing the reasons for such certification or finding.

Rule 4. Appeal as of Right - How Taken.

(a) ***Filing the Notice of Appeal.*** An appeal permitted by law as of right from the Territorial Court to the Appellate Division shall be taken by filing a notice of appeal with the Clerk of the Territorial Court within the time allowed by Rule 5. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the Appellate Division deems appropriate, which may include dismissal of the appeal.

(b) ***Joint or Consolidated Appeals.*** If two or more persons are entitled to appeal from a judgment or order of the Territorial Court and their interests are such that joinder is practicable, they may file a joint notice of appeal, or may join in an appeal after filing separate

timely notices of appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the Appellate Division upon its own motion, upon motion of a party, or by stipulation of the parties to the several appeals. When parties have filed a joint notice of appeal, only one appeal will be docketed and only one docketing fee paid. Parties filing a joint notice of appeal shall file a single consolidated brief and appendix.

(c) **Content of the Notice of Appeal.** The notice of appeal shall specify the party or parties taking the appeal; shall designate the judgment, order, or part thereof appealed from and the reason(s) or issue(s) to be presented on appeal. An appeal shall not be dismissed solely for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice, but any omission of matters of substance may be grounds for sanctions.

(d) **Service of the Notice of Appeal.** Appellant shall serve notice of the filing of a notice of appeal by filing a copy thereof with the Clerk of the Appellate Division and counsel of record for each party other than the appellant, or, if a party is not represented by counsel, to the last known address of that party; and shall file a certificate of service with the notice of appeal. The Clerk of the Territorial Court shall transmit forthwith a copy of the notice of appeal and a certified list of the docket entries to the Clerk of the Appellate Division, whether or not motions are pending. When an appeal is taken in a criminal case, counsel shall also serve a copy of the notice of appeal upon the defendant, either by personal service or by mail addressed to the defendant. Appellant shall note on each copy served the date on which the notice of appeal was filed. Failure of appellant to serve notice shall not affect the validity of the appeal, but may be cause for sanctions. Service shall be sufficient notwithstanding the death of a party or the party's counsel. The Clerk shall note in the docket the names of the parties to whom the appellant mailed copies, with the date of mailing as indicated on the certificate of service.

(e) **Payment of Fees.** Upon the filing of any separate or joint notice of appeal from the Territorial Court, the appellant shall pay to the Clerk of the Appellate Division such fees as are required and referenced in Rule 3.

(f) **Notice to Trial Judge; Opinion in Support of Order.** At the time of the filing of the notice of appeal, the appellant shall mail a copy thereof by ordinary mail to the trial judge. Within fifteen days thereafter, the trial judge may file and mail to the parties and the Clerk of the Appellate Division a written opinion or a written amplification of an earlier written or oral recorded ruling or opinion. Failure to give notice of the appeal to the trial judge shall not affect the jurisdiction of the Appellate Division.

(g) **Notice of Appeal in Pro Se Cases.** The Territorial Court shall deem a paper filed by a *pro se* litigant after the decision of the Territorial Court in a civil or criminal case, or in a habeas corpus case, to be a notice of appeal despite informality in its form or title if it evidences an intention to appeal. The Territorial Court shall deem an application for leave to appeal IFP or an application for a certificate of probable cause to be a notice of appeal if no formal notice has been filed.

Rule 5. Appeal as of Right - When Taken.

(a) **Appeals in Civil Cases.**

(1) In a civil case in which an appeal is permitted by law as of right from the Territorial Court to the Appellate Division, the notice of appeal required by Rule 4 shall be filed with the Clerk of the Territorial Court within thirty days after the date of entry of the judgment or order appealed from; but if the Government of the Virgin Islands or an officer or agency thereof is a party, the notice of appeal may be filed by any party within sixty days after such entry. A notice of appeal filed after the announcement of a judgment or order -- but

before entry of the judgment or order -- is treated as filed on the date of and after the entry of judgment.

(2) To be appealable as of right, an order of the Territorial Court must either be final or must be classified within the following categories of interlocutory orders:

(i) An interlocutory order granting, continuing, modifying, refusing, or dissolving an injunction, or refusing to dissolve or modify an injunction;

(ii) An interlocutory order appointing a receiver or an order refusing to wind up a receivership or refusing to take steps to accomplish the purposes thereof, such as directing sales or other disposal of property.

(3) If one party timely files a notice of appeal, any other party may file a notice of appeal within fourteen days after the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this Rule, whichever period last expires.

(4) If any party makes a timely motion of a type specified immediately below within ten days after entry of judgment in the Territorial Court or within ten days after leave has been granted pursuant to TERR. CT. R. 65, the time for appeal for all parties runs from the entry of the order disposing of the last such motion outstanding. This provision applies to a motion

(i) for judgment under FED. R. CIV. P. 50(b);

(ii) to amend or make additional findings of fact under FED. R. CIV. P. 52(b), whether or not granting the motion would alter the judgment;

(iii) to alter or amend the judgment under TERR. CT. R. 50;

(iv) for a new trial under TERR. CT. R. 50;

(v) for a new trial under TERR. CT. R. 65; or

(vi) for relief under FED. R. CIV. P. 60 if the motion is filed within ten days after the entry of judgment.

A notice of appeal filed after announcement or entry of the judgment but before disposition of any of the above motions is ineffective to appeal from the judgment or order, or part thereof, specified in the notice of appeal, until the date of the entry of the order disposing of the last such motion outstanding. Appellate review of an order disposing of any of the above motions requires the party, in compliance with Rule 4(c), to amend a previously filed notice of appeal. A party intending to challenge an alteration or amendment of the judgment shall file with the Clerk of the Territorial Court a notice or an amended notice of appeal within the time prescribed by this Rule 5, measured from the entry of the order disposing of the last such motion outstanding. The party shall simultaneously file with the Appellate Division a copy of the notice or amended notice of appeal, attaching a copy of the final order or judgment. No additional fees will be required for filing an amended notice. A motion for attorney's fees shall not affect the running of the time for appeal.

(5) The Territorial Court shall have authority to consider and deny any motion filed for relief under FED. R. CIV. P. 60 that is filed more than ten days after the final judgment or order is entered. If the Territorial Court would otherwise be disposed to grant such a motion that is filed more than ten days after entry of judgment or order, it shall so notify the Appellate Division and request that the entire matter be remanded to the Territorial Court for further action. The Appellate Division shall grant such request in its discretion, taking into consideration the interests of judicial efficiency and the possibility of abuse. The Territorial Court shall have no authority to grant motions specified in Rule 5(a)(4)(i)-(vi) filed more than ten days after the entry of judgment or order, or filed more than ten days after leave has been granted pursuant to TERR. CT. R. 65, nor shall the untimely filing of such motion affect the time for appeal or the jurisdiction of the Appellate Division over the appeal.

(6) The appellant shall promptly file in the Appellate Division notice of the filing or pendency of any motion in the lower court and, in addition, shall file the Territorial Court's resolution no later than ten days after the trial court disposes of the motion. It is the responsibility of the appellant to keep the Appellate Division apprised of any change in the status of any action that may affect the appeal. Failure to follow this Rule may result in sanctions.

(7) The Clerk of the Territorial Court shall transmit to the Clerk of the Appellate Division copies of any motions filed or orders entered in the Territorial Court after the notice of appeal is filed.

(8) The Appellate Division, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal upon motion filed not later than thirty days after the expiration of the time prescribed by this Rule 5(a). Any such motion must be served upon the remaining parties. Notice of appeal or any motion for extension of time which is filed after expiration of the prescribed time shall be given to the other parties in accordance with the rules of the Territorial Court. No such extension shall exceed thirty days past such prescribed time or ten days from the date of entry of the order granting the motion, whichever occurs later.

(9) A judgment or order is entered within the meaning of this Rule when it is entered in compliance with Territorial Court Rule 49, and to the extent that it is not inconsistent with Rules 58 and 79(a) of the Federal Rules of Civil Procedure. Failure of the Territorial Court to enter a separate document representing the judgment and/or order shall not toll the time for appeal. The time for appeal begins upon the entry of the final order into the docket.

(10) The Appellate Division, if it finds (a) that a party entitled to notice of the entry of a judgment or order did not receive such notice from the Clerk of the Territorial Court or any party within twenty-one days of its entry and (b) that no party would be substantially prejudiced, may, upon motion filed within ninety days of

entry of the judgment or order or within seven days of receipt of such notice, whichever is earlier, reopen the time for appeal for a period of fourteen days from the date of entry of the order reopening the time for appeal. This Rule shall not be construed as excusing the parties from their affirmative responsibility to regularly monitor the status of their case in the Territorial Court.

(11) If a notice of appeal is mistakenly filed in the Appellate Division, the Clerk of the Appellate Division shall note thereon the date when the Clerk received the notice and transmit it to the Clerk of the Territorial Court and it shall be deemed filed in the Territorial Court on the date so noted by the Clerk of the Appellate Division.

(b) Appeals in Criminal Cases.

(1) In a criminal case, a defendant shall file the notice of appeal in the Territorial Court within ten days after the entry of (i) the judgment or order appealed from or (ii) a notice of appeal by the Government. A notice of appeal filed after the announcement of a decision, sentence, or order -- but before entry of the judgment or order -- is treated as filed on the date of and after the entry of judgment. If a defendant makes a timely motion specified immediately below, an appeal from a judgment of conviction must be taken within ten days after the entry of the order disposing of the last such motion outstanding, or within ten days after the entry of the judgment of conviction, whichever is later. This provision applies to a timely motion

(i) for judgment of acquittal pursuant to FED. R. CRIM. P. 29;

(ii) for arrest of judgment pursuant to FED. R. CRIM. P. 34;

(iii) for a new trial on any ground other than newly discovered evidence pursuant to TERR. CT. R. 135; or

(iv) for a new trial based on the ground of newly discovered evidence, pursuant to TERR. CT. R. 135, if the motion is filed

before or within ten days after the entry of the judgment. If an appeal is already pending at the time a motion for new trial based on the ground of newly discovered evidence is filed, the Territorial Court may grant the motion only on remand of the case.

A notice of appeal filed after the Territorial Court announces a decision, sentence, or order but before it disposes of any of the above motions, if the motion was timely filed, is ineffective until the date of the entry of the order disposing of the last such timely filed motion outstanding, or until the date of the entry of the judgment of conviction, whichever is later. Notwithstanding the provisions of Rule 4(c), a valid notice of appeal is effective without amendment to appeal from an order disposing of any of the above motions. When an appeal by the Government is authorized by statute, the notice of appeal shall be filed in the Territorial Court within thirty days after (i) the entry of the judgment or order appealed from or (ii) the filing a notice of appeal by any defendant.

(2) The filing of a notice of appeal under this Rule 5(b) does not divest the Territorial Court of jurisdiction to correct a sentence under TERR. CT. R. 112, 136, or 137, or under the Federal Rules of Criminal Procedure (to the extent that the Federal Rules of Criminal Procedure apply in the Territorial Court); nor does the filing of such a motion affect the validity of a notice of appeal filed before entry of the order disposing of the motion.

The Territorial Court shall have authority to consider and deny any motion for a new trial based on the ground of newly discovered evidence, pursuant to TERR. CT. R. 135, that is filed more than ten days after the final judgment or order is entered. If the Territorial Court would otherwise be disposed to grant such a motion that is filed more than ten days after entry of judgment or order, it shall so notify the Appellate Division and request that the entire matter be remanded to the Territorial Court for further action. The Appellate Division shall grant such request in its discretion, taking into consideration the interests of judicial efficiency and the possibility of abuse. The Territorial Court shall have no authority to grant motions specified in

Rule 5(b)(1)(i)-(ii) filed more than seven days after the entry of judgment or order, nor shall the untimely filing of such motion affect the time for appeal or the jurisdiction of the Appellate Division over the appeal.

(3) The appellant shall promptly file in the Appellate Division notice of the filing or pendency of any motion in the lower court and, in addition, shall file the Territorial Court's resolution no later than ten days after the trial court disposes of the motion. It is the responsibility of the appellant to keep the Appellate Division apprised of any change in the status of any action that may affect the appeal. Failure to follow this Rule may result in sanctions.

(4) The Clerk of the Territorial Court shall transmit to the Clerk of the Appellate Division copies of any motions filed or orders entered in the Territorial Court action after the notice of appeal is filed.

(5) A judgment or order is entered within the meaning of this subdivision when it is entered on the criminal docket. Upon a showing of excusable neglect, the Appellate Division may -- before or after the time has expired, with or without motion and notice -- extend the time for filing a notice of appeal for a period not to exceed thirty days from the expiration of the time otherwise prescribed by this subdivision. Notice of appeal or any motion for extension of time which is filed after expiration of the prescribed time shall be served on the other parties in accordance with the rules of the Territorial Court.

(6) If a notice of appeal is mistakenly filed in the Appellate Division, the Clerk of the Appellate Division shall note thereon the date on which it was received and transmit it to the Clerk of the Territorial Court and it shall be deemed filed in the Territorial Court on the date so filed in the Appellate Division.

(c) **Appeal by an Inmate Confined in an Institution.** If an inmate confined in an institution outside the territorial boundaries of

the Virgin Islands files a notice of appeal, in either a civil or criminal case, of a Territorial Court judgment or appealable order in a civil or criminal case, the notice is timely filed if it is deposited in the institution's internal mail system on or before the last day for filing. Timely filing may be shown by a notarized statement by the Warden or individual in charge of the institution setting forth the date of deposit and stating that first-class postage has been prepaid. All other documentation indicating proof of deposit and mailing shall accompany the motion to deem filed.

(d) Appeals in Juvenile Matters.

Appeals in juvenile matters to the Appellate Division from the Territorial Court may be taken as a matter of right. The time to appeal and related procedures are governed by Rule 5(b), *Appeals in Criminal Cases*, and requests for a stay of a judgment or order of the Territorial Court shall be governed by Rule 8(b).

In all appeals contesting transfer of juveniles pursuant to 5 V.I.C. §§ 2508 and 2509, appellant shall move for expedited review under Rule 5(e).

(e) Expedited Appeals. A party who seeks an expedited appeal shall, within fourteen days of the notice of appeal, file with the Appellate Division a motion setting forth the exceptional reason that warrants expedition. Opposition, if any, to expedited treatment shall be filed within seven days thereafter unless otherwise directed by the Court.

(f) Case Caption. The case caption should list the appellant(s) v. appellee(s), in that order. Reference should also be made to parties' titles in the lower court action. Nominal appellees should be identified below the initial caption with their lower court titles. Juvenile appellants or appellees should be identified only by their initials.

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

2000 Amendments

Note to Subdivision (a). The amendment is for the purpose of conforming Virgin Islands Rules of Appellate Procedure 5(a) and 6(a) with 28 U.S.C.A. § 1292. Therefore, the Rules formerly found at V.I. R. APP. P. 6(a)(i) and (ii) are moved to renumbered subdivisions 5(a)(2)(i) and (ii), thereby making appeals pursuant to such subdivisions appealable as of right.

Notes to Subdivision (d). The amendment is to clarify that requests for a stay of judgment or order in juvenile matters shall be governed by V.I. R. APP. P. 8(b). Therefore, the words "and requests for a stay of a judgment or order of the Territorial Court shall be governed by Rule 8(b)" have been inserted.

Rule 5(d) is amended to include reference to V.I. CODE ANN. tit. 5, § 2509 in appeals contesting the transfer of juveniles.

The final amendment is not substantive, but technical. The last sentence of Rule 5(d) is amended to delete reference to 5(d), and insert 5(e) pertaining to motions for expedited review.

Rule 6. Appeals by Permission.

(a) **Petition for Permission to Appeal.** An appeal from an order in a civil action, not otherwise appealable, containing the statement by a Territorial Court judge that such order involves a controlling question of law about which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation; may be sought by filing a petition for permission to appeal with the Clerk of the Court of the Appellate Division within ten days after the entry of such order in the Territorial Court with proof of service on all other parties to the action in the lower court. An order as defined in this paragraph may be amended at any time to include the prescribed statement, and permission to appeal may be sought within ten days after entry of the order as amended.

(b) **Motion for Expedited Review.** In all interlocutory appeals, appellant shall move for expedited review under Rule 5(e). Failure to so request may result in sanctions upon the attorney or party.

(c) **Content of Petition; Answer.** The petition shall not exceed ten pages in length. The petition shall include or have annexed thereto a copy of the order from which appeal is sought and of any findings of fact, conclusions of law, and opinion relating thereto. Petitions for appeals from an order pursuant to paragraph (a)(iii) also shall contain a statement of the facts necessary to understand the controlling question of law determined by the order of the Territorial Court; a concise statement of the issue(s) to be presented; and a statement of the reasons why a substantial basis exists for a difference of opinion on the question and why an immediate appeal may materially advance the termination of the litigation.

Within seven days after service of the petition, an adverse party may file an answer in opposition not more than five pages in length. The application and answer shall be submitted without oral argument unless otherwise ordered.

(d) **Number of Copies.** An original and three copies of the petition for permission to appeal pursuant to this Rule must be filed unless otherwise ordered by this Court.

(e) **Grant of Permission; Cost Bond.** Within ten days after the entry of an order granting permission to appeal, the appellant shall (1) pay to the Clerk of the Appellate Division such fees as are required and referenced in Rule 3, and (2) file a bond for costs if required by this Court. The Clerk of the Appellate Division shall notify the Clerk of the Territorial Court forthwith if such permission to appeal is granted. Upon receipt of such notice, the Clerk of the Territorial Court shall enter the appeal upon the docket and transmit the record in accordance with Rules 10 and 11. The petition shall be construed as notice of appeal.
(As amended October 6, 2000, eff. Oct. 31, 2000.)

2000 Amendments

Notes to Subdivision (a). The amendment is for the purpose of conforming V.I. R. APP. P. 5(a) and 6(a) with 28 U.S.C.A. § 1292. Therefore, former subdivisions (a)(i) and (ii) of Rule 6 are deleted and moved to renumbered subdivisions 5(a)(2)(i) and (ii), thereby making appeals pursuant to such subdivisions appealable as of right.

Rule 6(a) is further amended to reflect the deletion of former subdivisions 6(a)(i) and (ii). Therefore, the last sentence of subdivision (a) is amended as follows: "An ~~appeal from an~~ order as defined in ~~subparagraph (iii)~~ this paragraph may be amended at any time to include the prescribed statement, and permission to appeal may be sought within ten days after entry of the order as amended."

Note to Subdivision (b). The amendment is not substantive. The first sentence of Rule 6(b) is amended to delete reference therein to Rule 5(d), and insert 5(e) pertaining to motions for expedited review.

Rule 7. Appellate Mediation and Conciliation.

(a) **How Initiated.** Civil appeals to the Appellate Division may be referred to a mediator or magistrate judge to meet with counsel and parties to facilitate settlement of the case, simplify issues, or otherwise assist in the expeditious handling of an appeal.

(b) **Attendance at Sessions.** Mediation sessions must be attended by each party, or another person with actual authority to settle the case, and their counsel. Failure of counsel to attend sessions may result in the imposition of sanctions, including dismissal of the appeal. Counsel is not required for parties appearing *pro se*.

(c) **Clerk as Administrator; Case Selection.** The Clerk of the District Court shall serve as the program administrator of the Appellate Mediation Program. A party may request mediation, but the Presiding Judge or a magistrate judge will determine which cases are appropriate

for mediation. Case selection will usually take place approximately thirty days after a case has been docketed for appeal. Counsel of record will receive notice of case selection and of the mediator assigned.

An initial mediation session will be scheduled by the mediator within thirty days of a case's selection for mediation, with additional sessions to be scheduled as needed.

(d) **Submission and Service of Papers.** The Clerk will provide the mediator with a copy of the judgment, opinion, and/or order on appeal, the appeal information statement, the appellant's statement of issues on appeal, and all relevant motions. Upon request of the mediator, counsel shall prepare and submit to the mediator a position paper of no more than ten pages (double spaced), stating their parties' views on the key facts and legal issues in the case. The position paper will include a statement of motions filed and their status. All motions filed or decided while mediation is underway are to be identified for the mediator and submitted to her or him upon request. Copies of documents submitted to the mediator should be served upon opposing counsel unless the mediator excuses such service. Documents prepared for mediation sessions are not to be filed with the Clerk except as noted below.

(e) **Argument Schedule; Motion to Postpone.** All cases in mediation remain subject to normal scheduling for briefing and oral argument. If it is the mediator's view that additional mediation sessions are required and that such sessions would affect the briefing schedule in the case, counsel shall request an extension by filing a joint motion to defer or postpone the briefing, oral argument, and/or consideration date(s). Counsel shall represent that the mediator concurs in the request.

(f) **Privileged Discussions.** The content of mediation discussions and proceedings, including any statement made or document prepared by any party, attorney, or other participant, is privileged and shall not be disclosed to the Appellate Division or construed for any

purpose as an admission against interest. To that end, the parties shall not file any motions or other document that would disclose any information about the content of a mediation, whether or not it has been concluded. This means that parties are prohibited from using any information obtained as a result of the mediation process as a basis for any motion other than a motion affecting the briefing or argument schedule.

(g) **Mediation Not Binding.** No party shall be bound by anything said or done at a mediation session unless a settlement is reached. If a settlement is reached, the agreement shall be reduced to writing and shall be binding upon all parties to the agreement.

(h) **Costs.** Mediators shall be compensated by the parties. The Court 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 Court in the order referring the matter to mediation. Each party shall pay one-half or such other proportionate share of the total charges of the mediators as may be agreed upon, unless the mediator and/or the Court determines that one party has not mediated in good faith.

(i) **Selection of Mediator.** Mediators for the Appellate Division will be selected by the Court from those qualified under either the District Court of the Virgin Islands Local Rule of Civil Procedure 3.2, and/or Territorial Court Rule 40(a)(3).

(j) **Settlement.** If a case is settled, the mediator or counsel shall file a stipulation of dismissal. Such stipulation must be filed within fifteen days after the settlement is reached unless a short extension is requested by counsel by motion. If a case cannot be resolved through mediation, the parties shall so inform the Court within seven days after the last mediation session, and the matter will remain on the docket and proceed as if mediation had not been initiated.

**Rule 8. Bond and Stay or Injunction Pending Appeal in Civil Case;
Release Pending Appeal in Criminal Case.**

(a) **Bond or Other Security in Civil Case.** The Territorial Court may require an appellant in a civil case to file a bond or provide other security in such form and amount as it finds necessary to ensure payment of costs on appeal, including attorney's fees, pursuant to the applicable Rules of the Territorial Court.

(b) **Requests for a Stay of Judgment or Order of Territorial Court in Civil Case.** Requests for a stay of the judgment or order of the Territorial Court pending appeal, for approval of a supersedeas bond, or for an order suspending, modifying, restoring, or granting an injunction during the pendency of an appeal in a civil case must ordinarily be made in the first instance to the Territorial Court. When a matter is before the Territorial Court, its rules respecting time periods, practices, and procedures apply. A motion for such relief may be made to the Appellate Division, but the motion shall show that application to the Territorial Court for the relief sought is not practicable, or that the Territorial Court has denied an application, or has failed to afford the relief which the applicant requested, with the reasons given by the Territorial Court for its action. The motion shall also show the reasons for the relief requested and the facts relied upon, and, if the facts are subject to dispute, the motion shall be supported by affidavits, other sworn statements or copies thereof, and documentation demonstrating ownership, liens or other encumbrances, and availability of resources offered as security. With the motion shall be filed such parts of the record as are relevant. An original and three copies of the motion and any accompanying documents shall be filed with the Appellate Division. Reasonable notice of the motion shall be given to all parties. The motion shall be filed with the Clerk of the Appellate Division and normally will be considered by a three judge panel, but in exceptional cases where such procedure would be impracticable due to the requirements of time, the application will be decided by the Presiding Judge of the Appellate Division.

(c) Conditioning Stay upon Giving of Bond in Civil Case.

Relief available in the Appellate Division under this Rule may be conditioned upon the filing of a bond or other appropriate security in the Territorial Court. If security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the Territorial Court and irrevocably appoints the Clerk of the Territorial Court as the surety's agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. A surety's liability may be enforced on motion in the Territorial Court without the necessity of an independent action. The motion and such notice of the motion as the Territorial Court prescribes may be served on the Clerk of the Territorial Court who shall forthwith mail copies to the sureties if their addresses are known.

(d) Motions for Release Pending Appeal in Criminal Case.

Motions for release pending appeal in a criminal case must ordinarily be presented in the first instance to the Territorial Court. If the Territorial Court refuses release pending appeal, or imposes conditions of release, the judge shall state in writing the reasons for the action taken. If a hearing occurred in the Territorial Court addressing the issue of release, four copies of the transcript shall be filed with the Appellate Division. Earlier-imposed conditions shall be documented in the motion for release, and the conditions, rules, and documentation referenced in the preceding paragraph 8(c) apply as well. After reasonable notice to the non-movant, the motion shall be determined promptly upon such papers, affidavits, and portions of the record as the parties shall present or as the Appellate Division may require. The motion normally will be considered by a three judge panel, but in exceptional cases where such procedure would be impracticable due to the requirements of time, the application may be decided by the Presiding Judge of the Appellate Division, who may order the release of the appellant pending disposition of the motion.

The decision regarding release must be made in accordance with Virgin Islands law, as it may be supplemented by the provisions of

Rule 38 of the Federal Rules of Criminal Procedure. The movant has the burden of establishing that the defendant will not flee or pose a danger to any other person or to the community, that the appeal was not filed for delay, and that it raises a substantial question of law or fact likely to result in reversal or in an order for a new trial.

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

2000 Amendments

Note to Subdivision (b). The amendment is not substantive. The title of subdivision (b) is amended to delete the word "of" and insert the word "or". Therefore, the amendment is as follows: "Requests for a Stay of Judgment ~~of~~ [or] Order of Territorial Court in Civil Case."

Rule 9. Pretrial Release in a Criminal Case.

(a) **Order of the Territorial Court.** The Territorial Court shall state in writing, or orally on the record, the reasons for an order refusing or imposing conditions of release or ordering pretrial detention of a defendant in a criminal case. A party appealing from the order, as soon as practicable after filing a notice of appeal with the Territorial Court, must file in the Appellate Division a copy of the Territorial Court's order and its statement of reasons. An appellant who questions the factual basis for the Territorial Court's order must timely move for expedited review under Rule 5(d) and must file a transcript of any release proceedings in the Territorial Court or an explanation why a transcript has not been obtained. The appeal shall be heard, after reasonable notice to the appellee, upon such papers, affidavits, and portions of the record as the parties present or the Appellate Division may require. Briefs need not be filed unless the Appellate Division so orders.

(b) **Duties of the Clerk of the Territorial Court.** The Clerk of the Territorial Court shall transmit a list of docket entries within fifteen days of the filing of the appeal from the order refusing or imposing condition of release or ordering detention, and shall in

addition inform the Appellate Division of any order or judgment entered subsequent to the forwarding of such list. The appeal normally will be considered by a three judge panel, but in exceptional cases where such procedure would be impracticable due to the requirements of time, it may be decided by the Presiding Judge of the Appellate Division, who may order the release of the appellant pending disposition of the motion.

All decisions regarding release must be made in accordance with Virgin Islands law.

Rule 10. The Record on Appeal.

(a) **Composition of the Record on Appeal.** The original papers and exhibits filed in the Territorial Court, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the Clerk of the Territorial Court shall constitute the record on appeal in all cases. The Clerk of the Territorial Court shall forward to the Appellate Division a certified copy of docket entries, the notice of appeal, and a copy of the order or judgment being appealed upon receipt of the notice of appeal. The original complete record should only be transmitted upon request by the Appellate Division.

(b) **The Transcript of Proceedings; Duty of Appellant to Order; Notice to Appellee if Partial Transcript Is Ordered.**

(1) If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion. Within ten days after filing the notice of appeal (or entry of the order disposing of the type of timely motion specified in Rule 5(a)(4) or 5(b)(1), the appellant shall order from the reporter a transcript of such parts of the proceedings not already on file as the appellant deems necessary.

Orders for transcripts and/or a certificate that a particular reporter's transcript is not necessary shall be presented on the Transcript Purchase Order ["TPO"] form provided by the Clerk of the

Territorial Court and shall include the name of the reporter. No other form may be used. A separate TPO form shall be submitted for each reporter who participated in the proceeding being appealed. The TPO form shall specify which transcript is being requested and which is not necessary, where a reporter recorded the proceeding on more than one day and one or more of those transcripts is not needed for appeal. Any unnecessary expense resulting from an ambiguous request will be the financial responsibility of the party making such request. One copy of the form shall be served on each individual reporter from whom a transcript is ordered; the second copy shall be filed with the Clerk of the Appellate Division; the third copy shall be served on the appellee; and the fourth copy shall be filed with the Clerk of the Territorial Court.

(2) Unless the entire transcript is to be included, the appellant shall, within ten days of filing the notice of appeal (or entry of the order disposing of the type of timely motion specified in Rule 5(a)(4) or 5(b)(1)), file a statement of the issues the appellant intends to present on the appeal and shall serve on the appellee a copy of the completed TPO. If the appellee deems additional transcript(s) or other parts of the proceedings to be necessary, the appellee shall, within ten days after the service of the completed TPO form, file and serve on the appellant a designation of additional parts of the record to be included. Unless the appellant has ordered such parts within ten days after service of such designation, and has so notified the appellee, the appellee may, within the following ten days, either order the parts or file a motion in the Appellate Division for an order requiring the appellant to do so. If additional transcripts are needed, appellee shall file and serve a completed TPO form as indicated in subsection (1) of this Rule.

(3) At the time the TPO is ordered, a party must make satisfactory arrangements with the reporter for payment of the cost of the transcript.

(c) **Statement of the Evidence or Proceedings When No Report Was Made or When the Transcript Is Unavailable.** If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement shall be served on the appellee within ten days of filing the notice of appeal (or entry of the order disposing of the type of timely motion specified in Rule 5(a)(4)), and the appellee may serve objections or proposed amendments thereto within ten days after service. If the parties are not able to resolve any differences in the statement of the evidence or proceedings, the Appellate Division may refer the statement and any objections or proposed amendments to the Territorial Court for settlement of the differences and approval, and the statement, as settled and approved, shall be returned to the Clerk of the Appellate Division as the record on appeal.

(d) **Agreed Statement of Facts on Appeal.** In lieu of the record on appeal as defined in subdivision (a) of this Rule, the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the Territorial Court and setting forth only so many facts averred and proved or sought to be proved as are essential to a decision of the issues presented.

(e) **Correction or Modification of the Record.** If any difference arises over whether the record truly discloses what occurred in the Territorial Court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the Appellate Division, on proper suggestion or of its own initiative, or the Territorial Court, either before or after the record is transmitted to the Appellate Division, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted. All other questions about the form and content of the record shall be presented for decision to the Appellate Division.

Rule 11. Transmission of the Record on Appeal.

(a) **Duty of Appellant.** After filing the notice of appeal, the appellant, or in the event that more than one appeal is taken, each appellant, shall comply with the provisions of Rule 11(b) and shall take any other action necessary to enable the Clerk of the Territorial Court to assemble and transmit the record to the Appellate Division. A single record shall be transmitted.

(b) **Duty of Reporter to Prepare and File Transcript; Notice to Appellate Division; Duty of Clerk to Transmit Certified Copy of the Docket Entries in Lieu of Record; Retention of Record in Territorial Court.** Upon receipt of an order for a transcript, the reporter shall acknowledge in Part II of the TPO the fact that the reporter has received it, the estimated number of pages, and the date on which the reporter expects to have the transcript completed, and shall transmit the TPO form, so endorsed, to the Appellate Division. If the reporter cannot complete the transcript within ninety days of receipt of the TPO, the reporter shall request an extension of time from the Clerk of the Appellate Division and the action of the Clerk of the Appellate Division shall be entered on the docket and the parties notified. In the event of the failure of the reporter to file the transcript within the time allowed, the Clerk of the Appellate Division shall notify the Presiding Judge for such action as is appropriate. Upon completion of the transcript, the reporter shall file it with the Clerk of the Territorial Court and shall notify the Clerk of the Appellate Division that the reporter has done so by completing Part III of the TPO and filing it with the Appellate Division.

When the record is complete for purposes of the appeal, the Clerk of the Territorial Court shall transmit a certified copy of the updated list of docket entries in lieu of the entire record, listing all the documents filed in the Territorial Court action in chronological order, indicating the date of signature by the Territorial Court judge and the date that the order was entered by the Clerk of the Territorial Court, and identifying each document with reasonable definiteness. The

original file shall not be transmitted by the Territorial Court Clerk unless during the pendency of the appeal the Clerk of the Appellate Division directs that designated parts of the record be transmitted.

(c) **Transmission of Record to Appellate Division.**

Notwithstanding the provisions of (a) and (b) of this Rule 11, the Appellate Division may request transmission of part or all of the record by the Clerk of the Territorial Court in order to address a motion or the issues on appeal. Upon resolution of the motion or appeal, the Clerk of the Appellate Division shall return the record to the Territorial Court.

(d) **Partial Record with Motions.**

If a party desires to move in the Appellate Division for dismissal, for release, for a stay pending appeal, for additional security on the bond on appeal or on a supersedeas bond, or for any intermediate order, the movant shall provide copies of all relevant Territorial Court entries at the time the motion is filed, any relevant judgment, decision, or order of the Territorial Court, and any accompanying memorandum or opinion, and any other part of the original record as the Appellate Division shall designate.

Rule 12. Docketing of the Appeal; Filing a Representation Statement.

(a) **Docketing.**

Upon receipt of the copy of the notice of appeal filed by the appellant pursuant to Rule 4(d), the Clerk of the Appellate Division thereupon shall enter the appeal upon the docket in conformance with Rule 5(e) and shall so notify all parties to the lower court action.

(b) **Statement of Representation.**

Within ten days after filing a notice of appeal, unless another time is designated by the Appellate Division, the attorney who filed the notice of appeal shall file with the Clerk of the Appellate Division an appeal information statement, naming each party represented on appeal by that attorney.

The appeal information statement form will be provided by the Clerk of the Appellate Division.

Rule 13. Writs of Mandamus and Prohibition Directed to a Judge or Judges and Other Extraordinary Writs.

(a) **Mandamus or Prohibition to a Judge or Judges; Petition for Writ; Service and Filing.** Application for a writ of mandamus or of prohibition directed to a judge or judges of the Territorial Court shall be made by filing a petition therefor with the Clerk of the Appellate Division with proof of service on the respondent judge, on all parties to the action in the Territorial Court, and on the Clerk of the Territorial Court. Upon receipt of a copy of the petition, the Clerk of the Territorial Court shall forthwith transmit to the Clerk of the Appellate Division a list of docket entries and inform the Appellate Division of any subsequently-entered orders. The petition shall be titled "In re [name of petitioner]." The petition shall contain a statement of the facts necessary to understand the issues presented by the application; a statement of the issues presented and of the relief sought; a statement of the reasons why the writ should issue; and copies of any order or opinion or parts of the record which may be essential to understand the matters set forth in the petition. Upon receipt of the prescribed docket fee, the Clerk of the Appellate Division shall docket the petition and submit it to the Presiding Judge for assignment to a panel of the Appellate Division.

(b) **Denial; Order Directing Answer.** If the panel of the Appellate Division is of the opinion that the writ should not be granted, it shall deny the petition. Otherwise, it shall order that an answer to the petition be filed by the respondents within the time fixed by the order. The order shall be served by the Clerk of the Appellate Division on the judge named respondent and on all other parties to the action in the Territorial Court. All parties below (other than petitioner) shall be deemed respondents for all purposes, with the judge being denominated as nominal respondent. If the judge named as nominal

respondent does not desire to appear in the proceeding, the judge may so advise the Clerk of the Appellate Division and all parties by letter, but the petition shall not thereby be taken as admitted. The Clerk shall advise the parties of the dates on which briefs, if required, are to be filed and of the date, if any, of oral argument. The proceeding shall be given preference over ordinary civil cases.

(c) **Other Extraordinary Writs.** Application for extraordinary writs other than those provided for in subdivisions (a) and (b) of this Rule 13 shall be made by petition filed with the Clerk of the Appellate Division with proof of service on the parties named as respondents. Proceedings on such application shall conform, so far as is practicable, to the procedure prescribed in subdivisions (a) and (b) of this Rule.

(d) **Number of Copies.** Seven copies of petitions filed pursuant to paragraph (a) or (c) of this Rule and any answer, if ordered, shall be filed. The Court by order may direct that additional copies be furnished.

Rule 14. Habeas Corpus Proceedings.

(a) **Application for the Original Writ.** If custody of the applicant for a writ of habeas corpus originates from proceedings in the Territorial Court, or if the application concerns conditions of confinement while in the custody of the Government of the Virgin Islands, then the Territorial Court shall preside over the habeas proceeding. Only an appeal from the order of the Territorial Court denying the writ may be considered by the Appellate Division.

(b) **Necessity of Certificate for Probable Cause for Appeal.** An appeal by the applicant from the order of the Territorial Court denying the writ of habeas corpus may not proceed unless the adjudicating judge of the Territorial Court issues a certificate of probable cause. If the Territorial Court judge declines to issue the certificate, the judge shall state the reasons why such a certificate

should not be issued. The certificate or statement shall be forwarded to the Appellate Division together with the notice of appeal and the certified list of docket entries for the Territorial Court proceedings.

If the applicant demonstrates that the Territorial Court judge has denied the certificate, the notice of appeal shall be considered as a request to the Appellate Division for a certificate, and the request may be considered by the Presiding Judge, or any other judge designated by the Presiding Judge, or by a panel of the Appellate Division. A certificate of probable cause is not required for an appeal taken by the Government of the Virgin Islands. Applications to proceed IFP shall conform with Rule 3 and 4 V.I.C. § 513.

Rule 15. Format for Papers, Motions, and Briefs; Filing and Service.

(a) **Format, Caption, and Footnotes.** The use of both sides of a sheet of paper is encouraged. All printed matter must appear in at least eleven point type on opaque, unglazed paper. All papers and motions shall be firmly bound at the left margin in a secure manner that does not obscure the text, and that permits the document to lie reasonably flat when open. All staples or fasteners shall be covered, and must have smooth edges. Use of backbones or spines without stapling or fastening is prohibited. All papers and motions shall have margins on both sides of each page that are no less than one inch wide, and margins on the top and bottom of each page that are no less than three-quarters of an inch wide. All papers and motions shall consist of pages not exceeding eight and one half by eleven inches in size, with double spacing between each line of text. Copies may be used for filing and service if they are legible, except that an original signature shall be required by the movant on at least one copy of each document.

A motion or other paper addressed to the Appellate Division shall contain a caption setting forth the judicial division of St. Thomas/St. John or St. Croix, the title of the case, the docket number, reference to the Territorial Court docket number, and a descriptive title indicating the purpose of the paper. The covers of all papers and motions shall contain the name(s), address(es), phone number(s), and

facsimile number(s) of counsel for the party or parties on whose behalf the paper is submitted, or, if the party is proceeding *pro se*, the name, address, phone number(s), and facsimile number(s) of the party; and the names of counsel for opposing parties.

The cover of the brief of the appellant shall be blue; that of the appellee, red; that of an intervenor or amicus curiae, green; and that of any reply brief, gray. The cover of the appendix should be white. Where a transparent cover is utilized, the underlying cover sheet of the brief or appendix must nevertheless conform to the color requirements. The front covers of the briefs and appendices shall contain: (1) the judicial division of the Appellate Division and the number of the case; (2) the title of the case (see Rule 5(e)); (3) the judicial division and docket number of the Territorial Court action below; (4) the title of the document (e.g., Brief for Appellant, Appendix); and (5) the names, addresses, phone number(s), and facsimile number(s) of counsel representing the party on whose behalf the document is filed. The briefs and appendices shall conform to Rules 22-25.

All appendices shall be separate from the briefs and no attachments shall be appended to the briefs. All documents included must be clearly legible. Copies of the reporter's transcript and other papers may be inserted in the appendix. All pages of the appendix shall be clearly and sequentially numbered.

Excessive footnotes in briefs and motions are discouraged. Footnotes shall be printed in no less than ten point type.

(b) **Filing.** Papers required or permitted to be filed in the Appellate Division shall be filed with the Clerk of the Appellate Division. Filing may be accomplished by mail addressed to the Clerk, but filing shall not be timely unless the papers are received by the Clerk within the time fixed for filing. It is the responsibility of the attorney or *pro se* party to correctly file all documents, including orders, TPOs, bond receipts, and notices of appearance. It is further the responsibility of the attorney or *pro se* party to bring all errors to the notice of the Appellate Division. Failure to file any accompanying documents that are required pursuant to any of these Rules may result in the filing being rejected before or after docketing,

and/or may result in the issuance of sanctions against the party or against the attorney without further warning.

When a brief or motion includes a citation from another jurisdiction that is not available in the District Court library, a copy of the case cited must be attached. All citations shall be according to the Uniform System of Citation. If a decision of the Appellate Division of the District Court of the Virgin Islands is cited, the citation must indicate that it is an Appellate Division case by indicating the following in the citation: D.V.I. APP. DIV. (year). Failure to adequately cite may result in rejection of argument.

In accordance with ethical standards, any attorney who (1) appears to mislead the Court by providing law from another jurisdiction when this jurisdiction's law gives contrary analysis, or (2) does not present otherwise controlling contrary law, will be subject to such sanctions as the Court deems appropriate.

(c) **Service.** Copies of all papers filed by any party, at or before the time of filing, shall be served by a party or person acting for that party on all other parties to the appeal or review. Service on a party represented by counsel shall be made on counsel of the party, and receipt of service shall constitute service. Service by mail or by commercial carrier is complete on mailing or delivery to the carrier. Service by facsimile transmission is an acceptable method of service of process on the parties. When time does not permit actual service on other parties, or the moving party has reason to believe that another party may not receive the motion in sufficient time to respond before the Court acts (as in certain emergency motions), the moving party should notify such other parties by telephone and facsimile of the filing of the motion.

Papers presented for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the person served, certified by the person who made service. The certificate of service must be attached to all filings, failing which the filing may be rejected. Papers may not be filed by facsimile without prior authorization by the Clerk. Authorization may be secured

only in situations determined by the Clerk to be of an emergency nature or other compelling circumstance. In such instances, the original signed document must be filed promptly thereafter.

Rule 16. Computation of Time.

(a) **Application of Rule 9 of the Rules Governing the Territorial Court.** Computation of time for a matter being considered by the Territorial Court while a case is on appeal are subject to computation of time according to TERR. CT. R. 9.

(b) **Computation of Time.** For purposes of the Appellate Division, in computing any period of time prescribed or allowed by these Rules, by an order of the Court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the Clerk of the Appellate Division inaccessible, in which event the period runs until the next day which is not one of the aforementioned excluded days. When the period of time prescribed or allowed is less than eleven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this Rule, "legal holiday" includes only New Year's Day, Dr. Martin Luther King, Jr.'s Birthday, Presidents' Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President, the Congress of the United States, or the Chief Judge of the District Court.

(c) **Additional Time After Service by Mail.** Whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon that party and the paper is served by mail, three days shall be added to the prescribed period.

Rule 17. Extension of Time. All temporal deadlines shall be strictly construed. Failure to adhere to deadlines may result in dismissal without further notice. Motions for extension of time (excluding notices of appeal) shall be submitted at least five working days before the deadline which is requested to be extended. All other parties must receive a copy of the motion at least three working days before such deadline, and if the party wishes to oppose the motion, such opposition shall be filed at least one working day before the original deadline.

Rule 18. Corporate Disclosure; Business Entity in an Appeal; Representation of a Corporation.

(a) **Required Disclosure for a Business Entity.** Any business entity involved in an appeal must include in its first paper filed with the Appellate Division the nature of its organization: sole proprietorship, corporation, partnership; its use of a trade name, if any; and its affiliation and or its links to other businesses through complete or partial commonality of ownership or financial interest.

(b) **Representation.** If a corporation is pursuing or defending an appeal, it must be represented by counsel duly admitted to practice law in the District Court.

Rule 19. Notice of Possible Judicial Disqualification. If the Presiding Judge, or any other judge assigned to an appellate panel, participated at any stage of the case in the Territorial Court or in related proceedings, appellant, promptly after filing the notice of appeal, shall notify the Clerk of the Appellate Division in writing of the judge and/or the related proceeding, and shall send a copy of such notice to appellee's counsel. Appellee has a corresponding responsibility to so notify the Clerk if, for any reason, appellant fails to comply with this Rule fully and accurately.

Rule 20. Non-Conforming Motions, Briefs, and Appendices. All motions, briefs, and appendices must contain supporting documents, including relevant lower court pleadings, and must otherwise conform with the Rules of the Appellate Division. If the supporting documents are not so included, the document may be rejected by the Clerk of the Appellate Division before or after docketing.

Rule 21. Motions.

(a) **Content of Motions; Response.** Unless another form is elsewhere prescribed by these Rules, an application for an order or other relief shall be made by filing a motion for such order or relief with proof of service on all other parties. The motion shall contain or be accompanied by any matter required by a specific provision of these Rules governing such a motion, shall state with particularity the grounds on which it is based, and shall set forth the order or relief sought. If a motion is supported by briefs, affidavits, or other papers, they shall be served and filed with the motion. Any party may file a response in opposition to a motion within ten days after service of the motion. All motions shall be accompanied by a proposed order which includes a distribution list of all attorneys and *pro se* parties.

(b) **Motions for Procedural Orders.** Notwithstanding the provisions of this Rule regarding motions generally, motions for procedural orders, including any motion for extension of time, may be acted upon at any time by the Court, without awaiting a response thereto.

(c) **Power of a Single Judge.** In addition to the authority expressly conferred by these Rules or by law, the Presiding Judge, or any other judge designated by the Presiding Judge, may entertain and may grant or deny any non-dispositive motion or other pretrial matter including, but not limited to, briefing schedules, motions for extensions of time, and motions for substitution of counsel. The action of a single judge may be reviewed by an appellate panel.

(d) **Motions Decided by the Clerk.** Pursuant to a Rule or order of the Appellate Division, the Clerk may entertain and dispose of specified types of procedural motions which are ministerial in nature, relate to the preparation or printing of the appendix and briefs on appeal, or relate to calendar control. If application is promptly made by any party adversely affected by the action of the Clerk, such action may be reconsidered, vacated, or modified by the Presiding Judge or by an appellate panel.

(e) **Number of Copies.** Three copies of all motions shall be filed with the original, but the Court may require that additional copies be furnished.

(f) **Oral Argument.** No oral argument will be permitted on any motion unless ordered by the Appellate Division.

(g) **Uncontested Motions.** Each uncontested motion shall be certified as uncontested by counsel. In the absence of a timely response, the Court may treat a motion without certification as uncontested.

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

2000 Amendment

Note to Subdivision (f). The amendment is not substantive. The word "dismissal" is deleted as follows: "No oral argument will be permitted ~~dismissal~~ on any motion unless ordered by the Appellate Division."

Rule 22. Briefs.

(a) **Brief of the Appellant.** The brief of the appellant shall contain under appropriate headings and in the order here indicated:

(1) A table of contents, with page references, and a table of cases (alphabetically arranged), statutes, and other authorities cited, with references to the pages of the brief where they are cited.

(2) A statement of subject matter and appellate jurisdiction. The statement shall include:

(i) a statement of the basis for subject matter jurisdiction in the Territorial Court, with citation to applicable statutory provisions and with reference to the relevant facts to establish such jurisdiction;

(ii) a statement of the basis for jurisdiction in the Appellate Division, with citation to applicable statutory provisions and with reference to the relevant facts to establish such jurisdiction. The statement shall include relevant filing dates establishing the timeliness of the appeal and

(a) shall state that the appeal is from a final order or a final judgment that disposes of all claims with respect to all parties or, if not,

(b) shall include information establishing that the Appellate Division has jurisdiction on some other basis.

(3) A statement of the issues presented for review. This shall include a designation by reference to specific pages of the appendix or place in the proceedings at which each issue on appeal was raised, objected to, and ruled upon; and a statement of the standard or scope of review for each issue on appeal (e.g., whether the trial court abused its discretion, whether its findings of fact are clearly erroneous, etc.). The statement shall also provide, by way of subdivision,

(i) a statement of whether this case or proceeding has been before the Appellate Division previously, and whether the party is aware of any other case or proceeding that is in any way related, completed, pending, or about to be presented before the Appellate Division or any other court, state or federal. If the party is aware of any previous or pending appeals before the Appellate Division arising

out of the same case or proceeding, the statement should identify each such case; and

(ii) a copy of the order or orders being appealed and, if any, the relevant opinions of the Territorial Court, which shall be inserted in the appendix.

(4) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of proceedings, and its disposition in the court below. There shall follow a statement of the facts relevant to the issues presented for review, with appropriate references to the record (see paragraph (d) of this Rule 22).

(5) An argument. The argument may be preceded by a summary. The argument shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes, and parts of the record relied on.

(6) A short conclusion stating the precise relief sought.

(b) **Brief of the Appellee.** The brief of the appellee shall conform to the requirements of paragraph (a) (1)-(6) of this Rule, except that a statement of jurisdiction, of the issues, or of the case need not be made unless the appellee is dissatisfied with the statement of the appellant.

(c) **Reply Brief.** The appellant may file a brief in reply to the brief of the appellee, and if the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross appeal. No further briefs may be filed except with leave of Court. All reply briefs shall contain a table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with references to the pages of the reply brief where they are cited.

(d) **References in Briefs to the Record.** All assertions of fact in briefs shall be supported by a specific reference to the record. All references to portions of the record contained in the appendix shall be supported by a citation to the pages of the appendix at which those parts appear, followed by a parenthetical description of the document to which they referred, unless otherwise apparent from context. Intelligible abbreviations may be used. If reference is made to evidence, the admissibility of which is in controversy, reference shall be made to the pages of the appendix or of the transcript at which the evidence was identified, offered, and received or rejected.

(e) **Reproduction of Statutes, Rules, and Regulations.** If determination of the issues presented requires the study of statutes, rules, regulations, etc., or relevant parts thereof, they shall be reproduced in the appendix, or they may be supplied to the Court in pamphlet form.

(f) **Length of Briefs.** Except by permission of the Court, principal briefs shall not exceed fifty pages, and reply briefs shall not exceed twenty-five pages, exclusive of pages containing the table of contents and the table of authorities.

(g) **Briefs in Cases Involving Cross Appeals.** If a cross appeal is filed, the party who first files a notice of appeal, or in the event that the notices are filed on the same day, the plaintiff in the proceeding below, shall be deemed the appellant for the purposes of these Rules, unless the parties otherwise agree or the Court otherwise orders. The brief of the appellee shall conform to the requirements of paragraphs (a)(1)-(6) and (f) of this Rule 22 with respect to the appellee's cross appeal as well as response to the brief of the appellant, except that a statement of the case need not be made unless the appellee is dissatisfied with the statement of the appellant.

(h) **Briefs in Cases Involving Multiple Appellants or Appellees.** In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of

either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

(i) **Citations.** In the argument section of the brief, citations should be made to the United States Supreme Court; the United States Court of Appeals for the Third Circuit; the Appellate Division; the District Court; the Territorial Court; other United States courts of appeals; and/or any other court, in that order of precedence. For each legal proposition supported by citation in the argument, counsel shall cite and distinguish any opposing authority within the jurisdiction. Counsel shall make parallel citations to the V.I. Reports where Third Circuit Court of Appeals, District Court, Appellate Division, and Territorial Court decisions are reported.

Citations to federal opinions that have been reported shall be to the United States Reports, the Federal Reporter, the Federal Supplement, or the Federal Rules Decisions, and shall identify the judicial circuit or district and year of decision. Citations to the United States Supreme Court opinions that have not yet appeared in the official reports may be to the Supreme Court Reporter, the Lawyer's Edition, or United States Law Week in that order of preference. Citations to United States Law Week shall include the month, day, and year of the decision. Citations to federal decisions that have not been formally reported shall identify the court, docket number, and date, or refer to the electronically transmitted decision. Citations to services and topical reports, whether permanent or looseleaf, and to electronic citation systems, shall not be used if the text of the case cited has been reported in the United States Reports, the Federal Reporter, the Federal Supplement, or the Federal Rules Decisions. Citations to state court decisions should include the West Reporter system whenever possible, with an identification of the state court. Any decision cited by counsel that is not retrievable in hard copy form in the District Court of the Virgin Islands library must be provided as a part of the appendix.

When pertinent and significant authorities come to the attention of a party after the party's brief has been filed, or after

oral argument but before decision, a party shall promptly advise the Clerk of the Appellate Division, by letter, with a copy to all counsel, setting forth the citations. There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain, but the letter shall state the reasons for the supplemental citations without argument. A response, if any, shall be made promptly and shall be similarly limited.

Any failure to follow this format may result in sanctions without further notice.

(j) **Appellee's Brief in Consolidated Appeals.** The brief of an appellee who has been permitted to file one brief in consolidated appeals shall contain an appropriate cross reference index which clearly identifies and relates appellee's answering contentions to the specific contentions of the various appellants. The index shall contain an appropriate reference by appellee to the question raised and the page in the brief of each appellant.

(k) **Footnotes.** Excessive footnotes in briefs are discouraged. Footnotes shall be printed in no less than ten point type.

(l) **Certificate.** Each party shall include a certification in its initial brief filed with the Appellate Division that at least one of the attorneys whose names appear on the brief is a member of the bar of the District Court.

Rule 23. Brief of Amicus Curiae. A brief of *amicus curiae* may be filed only if accompanied by written consent of all parties or by leave of the Appellate Division. The brief may be filed conditionally with the motion for leave to file it, which shall identify the interest of the movant and shall state the reasons why a brief of *amicus curiae* is desirable. Any *amicus curiae* shall file its brief within the time allowed the party whose position the amicus will support, unless the Appellate Division for cause shown grants leave for later filing, in which event it shall specify within what period an opposing party may

answer. A motion of *amicus curiae* to participate in the oral argument will be granted only for extraordinary reasons.

Rule 24. Appendix to the Briefs.

(a) **Duty of Appellant to Prepare and File; Content of Appendix; Time for Filing; Number of Copies.** Appellant shall prepare and file an appendix to the briefs which shall contain all materials designated by all parties and shall include: a table of contents with page references and a copy of the notice of appeal; the judgment, order, or decision being appealed; a certified list of docket entries from the Territorial Court; and relevant portions of a trial transcript, exhibit, or other parts of the record referred to in the briefs at such length as may be necessary to preserve context. Except where they have independent relevance, memoranda of law filed in the Territorial Court should not be included in the appendix. Matters that were sealed at the Territorial Court level shall so indicate on the cover of the appendix. In an appeal challenging a criminal sentence, the appellant shall attach five copies of the presentence investigation report in an appropriately labeled sealed envelope.

Whenever an appeal challenges the sufficiency of the evidence to support a verdict or other determination (including an argument that a finding is clearly erroneous), the appendix shall reprint all the evidence of record which supports the challenged determination. The fact that parts of the record are not included in the appendix shall not prevent the parties or the Appellate Division from relying on such parts. The appendix is a separate, freestanding document.

Appellant shall file seven copies of the appendix with the Clerk of the Appellate Division at the time appellant's briefs are filed, and at the same time, shall serve one copy of the appendix on counsel for each party separately represented, unless the Appellate Division directs the filing or service of a lesser number, which shall occur only in extraordinary cases. If either party files a separate appendix, that party shall file seven copies with the Clerk of the Appellate Division at the time its briefs are filed and serve one copy

of the separate appendix on counsel for each party separately represented.

(b) **Determination of Contents of Appendix; Cost of Producing.**

The parties are required to consult and agree on the contents of the appendix. It is the duty of the parties in the first instance to cooperate in filing one joint appendix on appeal. The Appellate Division may permit, upon timely motion, the filing of separate appendices upon certification, with supporting documents, that a given party is not cooperating.

The following procedure is recommended to accomplish the goal of filing the joint appendix: Within ten days of when the transcript is prepared or the certification is filed, appellant should serve on the appellee a designation of the parts of the record which the appellant intends to include in the appendix and a statement of the issues which the appellant intends to present for review. Within ten days after receipt of the designation, the appellee shall serve upon the appellant a designation of those additional parts of the record that it deems necessary to present to the Appellate Division. The appellant shall include in the appendix the parts thus designated with respect to the appeal and any cross appeal. The parties shall not engage in unnecessary designation. The provisions of this paragraph shall apply to cross appellants and cross appellees. Sanctions may result from a failure to cooperate in the filing of a joint appendix.

Unless the parties otherwise agree, the cost of producing the appendix shall initially be paid by the appellant, but if the appellant considers that parts of the record designated by the appellee for inclusion are unnecessary for the determination of the issues presented, the appellant may so advise the appellee and the appellee shall advance the cost of including such parts. The cost of producing the appendix shall be taxed as costs in the case.

(c) **Arrangement of the Appendix.** The beginning of the appendix shall include a table of contents. The relevant docket entries shall be set out following the table of contents. Thereafter, other parts of the record shall be set out, including exhibits and any

relevant transcript entries, preferably in chronological order. The pages of the appendix shall be clearly and sequentially numbered; the page numbers within the original transcript may also appear on the page.

(d) **Sanctions Pursuant to Determination of Contents of Appendix.** The Court, sua sponte by rule to show cause or on the motion of any party, may impose sanctions in the form of denial of all or some of the costs of the appeal upon finding that any party has unreasonably and vexatiously caused the inclusion of materials in an appendix that are unnecessary for the determination of the issues presented on appeal.

A party filing such a motion shall do so within ten days after a bill of costs has been served. The movant shall submit with the motion an itemized statement specifically setting forth, by name and appendix page number, the item or items that the movant asserts were unnecessarily included in the appendix.

Any party against whom sanctions are requested may file an answer to the motion or rule to show cause. The answer shall be filed within ten days after service of the motion or rule to show cause.

Rule 25. Filing and Service of Briefs.

(a) **Time for Serving and Filing Briefs.** Appellant shall serve and file a brief within forty days after the date on which the record is complete and the briefing schedule is issued whichever occurs later. The appellee shall serve and file a brief within thirty days after service of the brief of the appellant. The appellant may serve and file a reply brief within fourteen days after service of the brief of the appellee. The Appellate Division by order may modify the periods prescribed above for serving and filing briefs for specific cases.

(b) **Number of Copies to Be Filed and Served.** Seven copies of each brief shall be filed with the Appellate Division, and two copies shall be served on counsel for each party separately represented.

(c) **Consequence of Failure to File Briefs.** If an appellant fails to file a brief within the time provided by this Rule, or within the time as extended, an appellee may move for dismissal of the appeal. If an appellee fails to file a brief within the time provided by this Rule, or within the time as extended, the appellee will not be heard at oral argument except by permission of the Appellate Division.

Rule 26. Prehearing Conference. The Appellate Division may direct the attorneys for the parties to appear before a judge (or magistrate judge) for a prehearing conference to consider the simplification of the issues and such other matters as may aid in the disposition of the proceeding by the Appellate Division.

Rule 27. Oral Argument.

(a) **In General.** Oral argument will be allowed in all cases unless the Appellate Division determines after examination of the briefs and record that oral argument is not needed.

Oral argument will seldom be permitted in matters in which one of the parties appears *pro se*. In certain appeals, the Clerk of the Appellate Division will inform the parties of the issues that the panel wishes the parties to address.

In determining the need for oral argument, the Appellate Division will consider whether:

- (1) the appeal is frivolous; or
- (2) the dispositive issue or set of issues has been recently authoritatively decided; or
- (3) the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.

(b) **Notice of Argument; Postponement.** The Clerk of the Appellate Division shall advise all parties whether oral argument is to be heard, and if so, of the time and place therefor, and the time to be

allowed each side. Postponement will be permitted rarely, and only in extraordinary circumstances.

(c) **Order and Content of Argument.** The appellant is entitled to open and conclude the argument if time is reserved for rebuttal. The opening argument shall include a fair statement of the case. Counsel will not read at length from briefs, records, or authorities.

(d) **Cross and Separate Appeals.** A cross or separate appeal shall be argued with the initial appeal as a single argument, unless the Appellate Division otherwise directs. If a case involves a cross appeal, the party who first files a notice of appeal, or in the event that the notices are filed on the same day, the plaintiff in the proceeding below shall be deemed the appellant for the purpose of this Rule, unless the parties otherwise agree or the Court otherwise directs. If separate appellants support the same argument, care shall be taken to avoid duplication of argument.

(e) **Non-Appearance of Parties.** If any of the parties fail to appear to present argument, the Court will hear argument on behalf of the remaining parties, and sanctions shall be considered against the absent party.

(f) **Use of Physical Exhibits at Argument; Removal.** If physical exhibits other than documents are to be used at the argument, counsel shall arrange to have them placed in the courtroom before the Appellate Division convenes on the date of the argument. After the argument, counsel shall cause the exhibits to be removed from the courtroom unless the Appellate Division otherwise directs. Failure to remove the exhibits shall result in their immediate disposal.

Rule 28. Entry of Judgment. The notation of a judgment in the docket constitutes entry of the judgement. The Clerk of the Appellate Division or a designee shall attest and enter the judgment following receipt of the judgment order or order with accompanying memorandum opinion of the

Appellate Division. The Clerk shall mail to all parties a copy of the opinion and order, if any, or of the judgment order if no opinion was written, and give notice of the date of entry of the judgment.

All written opinions of the Appellate Division shall be filed with and preserved by the Clerk. All opinions shall be printed under the supervision of the Clerk. All persons other than the parties desiring a copy of a printed opinion of the Appellate Division may receive one from the Clerk of the Appellate Division at a fee as may be set by the Appellate Division from time to time.

Rule 29. Interest on Judgments. Unless otherwise provided by law, if a judgment for money in a civil case is affirmed, whatever interest is allowed by law shall be payable from the date the judgment was entered in the Territorial Court. If a judgment is modified or reversed with a direction that a judgment for money be entered in the Territorial Court, the allowance of interest shall be determined by the Territorial Court upon resolution of the matter.

Rule 30. Costs; Damages for Delay.

(a) **To Whom Allowed.** Except as otherwise provided by law, if an appeal is dismissed, reasonable costs, which may include attorney's fees, shall be taxed against the appellant unless otherwise agreed by the parties or ordered by the Appellate Division; if a judgment is affirmed, reasonable costs shall be taxed against the appellant unless otherwise ordered; if a judgment is reversed, reasonable costs shall be taxed against the appellee unless otherwise ordered; if a judgment is affirmed or reversed in part, or is vacated, reasonable costs shall be allowed only as ordered by the Appellate Division. In cases involving the Government of the Virgin Islands or an agency or officer thereof, reasonable costs shall only be awarded as authorized by law. The Appellate Division shall, in its discretion, determine whether costs are reasonable.

If the Appellate Division determines that an appeal is frivolous, it may, after a separately filed motion or notice from the Court and reasonable opportunity to respond, award just damages and single or double costs to the appellee.

(b) **Bill of Costs; Objections; Costs to Be Inserted in Mandate or Added Later.** A party who desires such costs to be taxed shall state them in an itemized and verified bill of costs, including attorney's fees, which the party shall file with the Clerk of the Appellate Division, with proof of service, within fourteen days after the entry of judgment. The Appellate Division shall deny untimely bills of costs unless a motion showing extraordinary circumstances is filed with the bill. Objections to the bill of costs must be filed within ten days of service on the party against whom costs are to be taxed unless the time is extended by the Appellate Division. An answer to objections to a bill of costs may be filed within ten days of service of the objections. Issuance of the mandate shall not be delayed for taxation of costs, but if the mandate has been issued before final determination of costs, the statement, or any amendment thereof, shall be added to the mandate upon request by the Clerk of the Appellate Division to the Clerk of the Territorial Court.

Rule 31. Petition for Rehearing.

(a) **Time for Filing; Content; Answer; Action By Court If Granted.** A petition for rehearing may be filed within fourteen days after entry of judgment. The petition shall state with particularity the points of law or fact which, in the opinion of the petitioner, the Appellate Division has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present. Oral argument in support of the petition will not be permitted. No answer to a petition for rehearing will be received unless requested by the Appellate Division, but a petition for rehearing will ordinarily not be granted in the absence of such a request. If a petition for rehearing is granted, the Appellate Division may make a

final disposition of the cause without reargument or may restore it to the calendar for reargument or resubmission or may make such other orders as are deemed appropriate under the circumstances of the particular case.

(b) **Form of Petition; Number of Copies.** The petition shall not exceed fifteen pages in length, double-spaced, and seven copies shall be filed with the Appellate Division. All remaining parties shall be served in accordance with these Rules.

Rule 32. Issuance of Mandate; Stay of Mandate. The mandate of the Appellate Division shall issue twenty-one days after the entry of judgment unless the time is shortened or enlarged by order. A certified copy of the judgment and a copy of the opinion of the Appellate Division, if any, and any direction on costs shall constitute the mandate, unless the Court directs that a formal mandate issue. The timely filing of a petition for rehearing will stay the mandate until disposition of the petition unless otherwise ordered by the Appellate Division. If the petition is denied, the mandate shall issue seven days after entry of the order denying the petition unless otherwise ordered. The filing of a notice of appeal to the United States Court of Appeals for the Third Circuit will not stay the mandate.

A party who files a motion requesting a stay of the mandate pending appeal to the United States Court of Appeals for the Third Circuit must file, at the same time, proof of service on all other parties. The motion must show that an appeal would present a substantial question and that there is good cause for a stay. If granted, the Clerk of the Appellate Division shall so notify the Clerk of the Territorial Court. The Appellate Division may require a bond or other security as a condition to the grant of a stay of the mandate.

Rule 33. Voluntary Dismissal. Upon payment of any fees due, the Clerk of the Appellate Division shall dismiss the case and issue the mandate if the parties to an appeal or other proceeding sign and file with the Clerk of the Appellate Division an agreement that the proceeding be

dismissed. The agreement must specify the terms for payment of costs. An appeal may be dismissed on motion of the appellant upon such terms as may be agreed upon by the parties or fixed by the Appellate Division.

Rule 34. Substitution of Parties.

(a) **Death of a Party.** If a party dies after a notice of appeal is filed or while a proceeding is otherwise pending in the Appellate Division, the personal representative of the deceased party may be substituted as a party on motion filed by the representative, or by any party, with the Clerk of the Appellate Division. If the deceased party has no representative, any party may suggest the death on the record and proceedings shall then be had as the Appellate Division may direct. If an appellee dies after entry of judgment or order in the Territorial Court but before a notice of appeal is filed, an appellant may proceed as if death had not occurred. After the notice of appeal is filed, substitution shall be effected in the Appellate Division in accordance with this paragraph. If a party entitled to appeal shall die before filing a notice of appeal, the notice of appeal may be filed by the personal representative, or, if there is no personal representative, by the attorney of record within the time prescribed by these Rules. After the notice of appeal is filed, substitution shall be effected in the Appellate Division in accordance with this paragraph.

(b) **Substitution for Other Causes.** If substitution of a party in the Appellate Division is necessary for any reason other than death, substitution shall be effected in accordance with the procedure prescribed in paragraph (a) of this Rule 34, and by order of the Appellate Division.

(c) **Public Officers; Death or Separation from Office.**

(1) When a public officer who is a party to an appeal or other proceeding in the Appellate Division in his or her official capacity and during its pendency dies, resigns, or otherwise ceases to

hold office, the action does not abate and his or her successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) When a public officer is a party to an appeal or other proceeding in his or her official capacity, he or she may be described as a party by his or her official title rather than by name; but the Appellate Division may require his or her name to be added.

Rule 35. Duties of the Clerk.

(a) **Days of Operation.** The office of the Clerk of the Appellate Division shall be open during business hours on all days except Saturdays, Sundays, and legal holidays. Legal holidays when the office shall be closed are defined in Rule 16(b).

(b) **The Docket; Calendar; Other Records Required.** The Clerk of the Appellate Division shall maintain the docket which shall contain an index of cases. The Clerk of the Appellate Division shall enter a record of all papers filed, all process, orders, and judgments, and shall keep such other books and records as may be required by the Appellate Division.

(c) **Notice of Orders or Judgments.** Immediately upon the entry of an order or judgment, the Clerk of the Appellate Division shall serve a notice of entry by mail upon each party to the proceeding (or by putting a copy of the order or judgment in counsel's District Court box) together with a copy of any opinion respecting the order or judgment, and shall make a note in the docket of the mailing. Service on a party represented by counsel shall be made on counsel.

(d) **Custody of Records and Papers.** The Clerk of the Appellate Division shall have custody of the records and papers of the Appellate Division, and shall not permit any original record or paper to be taken from the Clerk's custody except as authorized by the orders or instructions of the Appellate Division. Original papers transmitted as the record on appeal or review shall, upon disposition of the case, be returned to the Territorial Court. The Clerk of the Appellate Division shall preserve at least one copy of briefs and appendices and other printed papers filed.

(e) **Dismissal for Failure to Prosecute.** When an appellant fails to comply with the Rules of the Appellate Division, the Clerk of the Appellate Division shall issue written notice to counsel or to the appellant who appears *pro se* that upon the expiration of fourteen days from the date of the notice, the appeal may be dismissed for want of prosecution unless appellant remedies the deficiency within that time. If the deficiency is not remedied within this period, the Clerk is authorized to dismiss the appeal for want of prosecution and issue a certified copy thereof to the Clerk of the Territorial Court as the mandate. The appellant shall not be entitled to remedy the deficiency after the appeal is dismissed except by order of the Court. A motion to set aside such an order must be justified by the showing of good cause and may not be filed after ten days of the date of dismissal.

Notwithstanding the preceding paragraph, if an appellant fails to comply with the Rules of Appellate Procedure with respect to the timely filing of a brief and appendix, at any time after the seventh day following the due date, the Clerk of the Appellate Division is authorized to dismiss the appeal for want of timely prosecution. The procedure to be followed in requesting an order to set aside dismissal of the appeal is the same as that set forth in the preceding paragraph.

Rule 36. Admission of Attorneys; Entry of Appearance; Conduct.

(a) **Admission to the Bar of the District Court.** An attorney who has been admitted to practice before the District Court of the

Virgin Islands may appear before the Appellate Division and is subject to all conditions of practice as recognized in the District Court. Admission *pro hac vice* will be granted in limited circumstances in accordance with the practice of the District Court.

(b) **Entry Of Appearance.** At the time a case is docketed, counsel for the appellant or petitioner, or *pro se* party shall file an appeal information statement and written appearance which shall include an address where notices and papers may be mailed or served upon him or her. Counsel for all parties or *pro se* parties in the Territorial Court entitled to participate in the proceedings as appellees or respondents and desiring to do so, shall file similar written appearances.

(c) **Conduct of Counsel.** The Appellate Division expects counsel to conduct themselves professionally and with civility at all times, which includes written and oral communications among counsel and with the Court. Violation of this Rule may lead to sanctions.

Rule 37. Rules. The Appellate Division, by order of the Chief Judge, may from time to time make and amend Rules governing its practice after giving appropriate public notice and an opportunity for comment from the local Bench, the public, and the local bar.