

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

IN RE:) **PROMULGATION No. 2018-005**
)
AMENDMENTS TO THE RULE)
GOVERNING APPEALS FROM THE)
MAGISTRATE DIVISION)
_____)

ORDER OF THE COURT

THIS MATTER is before the Court for the purpose of amending the Rule Governing Appeals from the Magistrate Division of the Superior Court of the Virgin Islands in order to effectuate the speedy and fair disposition of such appeals. Accordingly, it is hereby

ORDERED that Rule 322 of the Rules of the Superior Court of the Virgin Islands **SHALL BE AMENDED** to strike all existing language in its entirety and to replace it with the new language attached as “Exhibit 1”. It is further

ORDERED that Rule 6(e) of the Virgin Islands Small Claims Rules **SHALL BE AMENDED** to strike all existing language in its entirety and to replace it with the following new language:

(e) Appeals. Appeals from final judgments of the Small Claims Division shall be taken in accordance with Rule 322 of the Rules of the Superior Court.

It is further

ORDERED that, pursuant Rule 37(a) of the Virgin Islands Rules of Appellate Procedure, the Bench, Bar, and the public **MAY FILE** comments with the Clerk of this Court no later than thirty (30) days from the date of entry of this Order. It is further

ORDERED that these amendments **SHALL GO INTO EFFECT on December 1, 2018**, unless modified as a result of comments submitted under Rule 37(a).

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

SO ORDERED this 15th day of November, 2018.

/s/ Ive Arlington Swan
IVE ARLINGTON SWAN
Associate Justice

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

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

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

Rule 322. Appeal in Original Jurisdiction Cases.

(a) *Appealable Decisions.* Final orders or judgments of the Magistrate Division resolving completely the merits of cases which came before them pursuant to their original jurisdiction, as provided by 4 V.I.C. § 123(a), are immediately appealable to judges of the Superior Court of the Virgin Islands, as well as any interlocutory orders appealable by law.

(b) *Initiating Appeal; Record on Appeal.*

(1) *Time.* Appeal from a magistrate judge's decision may be obtained by filing a notice of appeal with the Clerk of the Superior Court within fourteen (14) days of entry of the judgment or order from which appeal is sought. 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) *Contents.* The notice of appeal shall identify the party initiating the appeal, designate the decision or order appealed from, and contain a concise position statement of no more than 780 words in length (or three pages for self-represented parties) which sets forth the issues the party wishes to present for appeal, together with a brief argument in support of the party's position. The notice must include a certificate evidencing service on all other parties to the Magistrate Division proceeding.

(3) *Docketing.* Upon receipt of a notice of appeal, the Clerk of the Superior Court shall place it upon the docket and assign it a RV case number and shall provide notice of the docketing to all parties to the Magistrate Division proceeding.

(4) *Filing Fee.* The party filing a notice of appeal must pay a filing fee in an amount prescribed by the Clerk of the Superior Court, or move to proceed *in forma pauperis*, no later than fourteen days from the date of filing the notice. The clerk or the judge shall dismiss the appeal if the party fails to comply with this requirement and no extension of time has been granted.

(5) *Response.* Within fourteen days of filing and service of the notice of appeal, any other party to the Magistrate Division proceeding may, but is not required, to file a response to the notice of appeal. The response may contain a concise position statement of no more than 780 words in length (or three pages for self-represented parties), which responds to the position statement in the notice of appeal, which may include designating additional issues for review.

(6) *Record.*

(i) The original case file, including all exhibits and evidence taken by the magistrate judge in consideration of the case, and the oral record or written transcript of proceedings, if any, shall constitute the record on appeal.

(ii) Upon the filing of a notice of appeal, the clerk shall promptly provide the complete case record to the judge assigned to the appeal of the magistrate judge's decision, including a digital copy of the oral recording (FTR recording) of the

proceedings before the magistrate judge. The judge may request the preparation of a written transcript of the proceeding for the court's benefit if determined that a written transcript is necessary to the fair and proper disposition of the matter.

(iii) The clerk, upon request and upon payment of the required fee, shall provide a copy of the digital FTR recording of the proceeding to any of the parties to the appeal. If the judge requests the preparation of a transcript, each other party shall have access to the file copy of the transcript at the Clerk's Office for use in the appeal. Any party may also purchase a copy of the transcript from the court reporter or transcriber who prepared the transcript at the judge's request, at the rate set for a copy by the Court for such transcripts. Any party may also arrange for the transcribing of the digital recording by a certified transcriber for that party's use. When relying on a digital record without a prepared transcript, the court and the parties shall cite to the minute and second—or range thereof—in which the event cited to occurs on the recording.

(iv) If no transcript or FTR recording of the evidence or proceedings at a hearing or trial was made, or if the transcript or FTR recording is unavailable, the parties shall confer and, within 10 days, file a joint statement of the evidence or proceedings using the best available means, including the parties' recollections. If the parties cannot agree to a joint statement, each party will separately file their own statements, which shall be referred to the Superior Court for disposition of the differences; provided, however, that in appropriate cases the Superior Court, in the sole discretion of the judge to whom the appeal is assigned, may order and conduct a trial *de novo* in lieu of such settlement.

(c) *Hearing; Disposition.*

(1) *Hearing.* Should the judge to whom the appeal is assigned determine that oral argument would be beneficial, the judge may schedule and hear oral argument after the notice of appeal has been filed, the filing fee has been paid or waived, the response to the notice of appeal filed or the time for filing a response has lapsed, and the complete record has been in possession of the judge. Notwithstanding this Rule, a judge assigned to a matter may, in the judge's sole discretion, schedule a hearing or oral argument at any time when necessary for the administration of justice or for the prompt and efficient administration of matters under this Rule.

(2) *Notice of Hearing Date; Postponement.* The Clerk of the Superior Court shall advise all parties of the hearing date, as well as the time and place thereof. Postponement will be permitted rarely, and only in extraordinary circumstances.

(3) *Failure to Appear.* If a party fails to appear at the hearing, the judge shall hear argument on behalf of the remaining parties; *provided, however,* that if the party who fails to appear is the party who filed a notice of appeal, the judge may immediately dismiss that party's appeal for failure to prosecute.

(4) *Conduct of Hearing.* The judge shall conduct the hearing in a manner so as to secure

the just, speedy, and inexpensive determination of the matter. However, the party who filed a notice of appeal shall be entitled to open and conclude the argument. Unless a trial *de novo* has been ordered in accordance with subsection (b)(6)(iv) of this Rule, the judge shall review the Magistrate Division's factual findings and conclusions of law utilizing the same appellate standards of review as the Supreme Court of the Virgin Islands would in like cases.

(5) *Disposition.*

(i) All appeals from decisions of from a magistrate judge's decision shall be decided within 90 days of the filing of the notice of appeal. If the judge has scheduled oral argument, the judge shall conclude the hearing by either orally announcing a decision or taking the matter under advisement. If a decision is announced orally, the judge shall reduce the judgment into writing as soon as practicable. If the matter is taken under advisement, the judge shall issue a written judgment within 30 days of the hearing. An oral decision or written judgment affirming the order of the magistrate judge in all respects and for the same reasons elucidated by the magistrate judge need not set forth the reasons for the affirmance; however, the basis for the decision must be explained if the judge elects to affirm on different grounds, to reverse or vacate the order of the magistrate judge in whole or in part, or if the judge is asked to rule on a matter raised but not addressed by the magistrate judge. If an oral decision or written judgment affirming the magistrate judge that does not set forth the reasons for affirmance is appealed to the Supreme Court of the Virgin Islands, the judge shall be deemed to have fully adopted the reasoning of the magistrate judge.

(ii) In highly extraordinary and unusual cases, such as those involving multiple issues of first impression of Virgin Islands law, the judge may order the parties to file full appellate briefs. The form, filing, and service of such briefs shall be governed by Rules 22 through 25 of the Virgin Islands Rules of Appellate Procedure, with the following modifications:

- All references to the Supreme Court shall be to the Superior Court, and references to the Superior Court shall be to the Magistrate Division of the Superior Court;
- The party who filed the notice of appeal shall be the appellant, while all other parties shall be the appellees; and
- Only two paper copies of the briefs, the Joint Appendix, and any supplemental appendix need be filed.

Once such a matter is fully briefed, the judge shall promptly schedule the matter for oral argument or resolve the matter through issuance of a written opinion and judgment.

(d) *Post-judgment motions.* Except for motions for attorney's fees and costs, post-judgment motions, including petitions for rehearing, shall not be permitted; provided, however, that the judge may, on motion of a party or on its own initiative, correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. A motion to correct such a mistake shall not toll the time to file a notice of appeal with the Supreme

Court of the Virgin Islands, and if an appeal to the Supreme Court is already pending, such a mistake may be corrected only with leave of the Supreme Court.

(e) *Appeal to Supreme Court.* A party may appeal a final judgment or appealable interlocutory order entered by the judge under this Rule to the Supreme Court of the Virgin Islands in accordance with the Virgin Islands Rules of Appellate Procedure.