

INTERNAL OPERATING PROCEDURES
OF THE
SUPREME COURT OF THE VIRGIN ISLANDS

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as amended April 1, 2014
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INTRODUCTION

A. Objectives.

These “Internal Operating Procedures” [“IOPs”] cover the essential processes of the Supreme Court, from the distribution of the briefs to the final termination of the appeal and court administration and are designed:

- (1) To insure that appeals are processed as expeditiously as possible consistent with the careful discharge of appellate responsibilities;
- (2) To insure decisional stability and avoid intra-court conflict of decisions by providing a means for the panel system to operate efficiently and at the same time avoid advertently overruling a holding of a published opinion of the Court;
- (3) To insure the opportunity for contributions by each justice appointed to a particular panel to all decisions of the panel; and
- (4) To maintain the highest degree of collegiality among the justices of the Supreme Court, judges of the Superior Court and Designated Justices appointed to sit on the Supreme Court.

B. Implementation.

These IOPs implement:

- (1) Statutory mandates, including the Revised Organic Act of 1954, as amended, and the Virgin Islands Code;
- (2) The Virgin Islands Rules of Appellate Procedure; and
- (3) The customs and traditions of this Court and its predecessor.

Although these IOPs have been publicly released in order to educate members of the Virgin Islands Bar and the general public as to how the Supreme Court carries out its operations, these IOPs do not have the force of law and do not govern practice before the Supreme Court. In other words, these IOPs are not intended to—and do not—create any substantive or procedural rights or other obligations on the part of the Supreme Court that are enforceable by litigants, members of the Bar, or the public. Because these IOPs are derived from other authorities and do not have the force of law, the IOPs will be modified from time to time, without prior notice, to accommodate changes in the Rules of Appellate Procedures and the Supreme Court’s evolving internal practices.

C. Definitions.

(1) **Chief Justice.** The Chief Justice of the Supreme Court is the Chief Justice selected pursuant to Section 3 of Act 6687 and 4 V.I.C. § 21(a). In the absence of the Chief Justice, the Associate Justice next in seniority based on commission shall serve as Chief Justice, followed by Designated Justices selected pursuant to 4 V.I.C. § 24(a), based on the seniority of their judicial commissions. Where several Justices are sworn on the same date the order of their swearing will determine the order of precedence.

(2) **Designated Justices.** Retired or Senior Justices and Active, Senior or Retired Judges of the Superior Court or other court of record in the Virgin Islands, as appointed by the Chief

Justice of the Supreme Court pursuant to 4 V.I.C. § 24(a), may serve on the Supreme Court as Designated Justices for specific cases and sittings. When serving with a Designated Justice, the Chief Justice and any Associate Justices shall have greater seniority. When two or more Designated Justices serve on a panel, their seniority shall be determined in the following order:

- (a) Senior Justices of the Supreme Court;
- (b) Retired Justices of the Supreme Court;
- (c) Active Judges of the Superior Court;
- (d) Senior Judges of the Superior Court;
- (e) Retired Judges of the Superior Court;
- (f) Active Judges of the District Court;
- (g) Senior Judges of the District Court;
- (h) Retired Judges of the District Court.

Within each category, seniority shall be determined based on the date of original judicial commission, except that the Presiding Judge of the Superior Court shall be deemed more senior than all other active Superior Court judges and the Chief Judge of the District shall be deemed more senior than other active District Court judges. Where several Designated Justices of equal seniority serve on a panel, the order of their swearing in as Designated Justices will determine the order of precedence.

(3) **Presiding Justice.** The Chief Justice is the Presiding Justice of the three justice panel. In the absence of the Chief Justice on a panel, the Presiding Justice is the Associate Justice of this Court with the longest tenure, followed by Designated Justices based on the seniority as set forth above.

(4) **Clerk.** Unless otherwise specified, “Clerk” refers to the Clerk of the Supreme Court.

(5) **Judicial Division.** The Supreme Court is not divided into divisions. Any reference to Judicial Divisions refers to the Judicial Divisions of the Superior Court designated by their geographic locations: The Division of St. Thomas and St. John and the Division of St. Croix.

D. Panels and Sittings.

(1) **Panel.** Pursuant to section 4 V.I.C. § 31(a), appeals to the Supreme Court shall be heard by a panel of three justices. The concurrence of any two justices is required for a decision.

(2) **Sittings.** The Supreme Court shall convene in regular session in a three-justice panel as needed (usually monthly), in St. Croix and in special or regular sessions at such other location within the Virgin Islands, at such date and time as may be determined by the Chief Justice. Sittings shall be held at the Supreme Court buildings or other court facilities. Not less than thirty days before Court is scheduled to sit, a calendar shall be distributed by the Clerk to all justices and the parties (through their counsel of record if appropriate).

CHAPTER 1. BRIEFS AND PREPARATION

1.1 Before a Court Sitting.

The Clerk will distribute briefs and appendices sufficiently in advance to afford at least two and preferably three full weeks' study in chambers before a Court sitting, except in special circumstances such as expedited cases. Two sets of briefs and one set of appendices are furnished to each chambers. As briefs, appendices and other pleadings are electronically filed

and readily viewable and available in the Virgin Islands Appellate Case Management System (VIACMS), the Clerk shall inquire of each chambers its preference for receiving such hard copies of the briefs and appendices and be guided accordingly. At the termination of the case, the briefs and appendices shall be returned to the Clerk. As cases become fully briefed, they are assigned to the justices and scheduled for disposition by the Chief Justice. Expedited matters are forwarded to the justices for immediate consideration.

1.2 Preparation of Case Calendar and Prehearing Assignment.

(a) **Prehearing Assignment.** At least thirty (30) days prior to any scheduled session of court, the Clerk shall prepare a proposed calendar of cases then at issue and ready for disposition before the Court. The Chief Justice shall assign each case on the approved calendar (usually by lot) to a justice who may prepare a prehearing memorandum for that case for circulation to the other justices on the panel at least five (5) days prior to the oral argument or submission date. The prehearing memorandum consists of a summary of facts, the procedures below, the issues before the Court for resolution, the arguments and legal position of the respective parties, and additional or other data (such as findings of fact, memorandum opinions, exhibits, etc.) as may be of assistance to the other members of the panel, and may include a recommended decision on any or all issues.

(b) **Public Notice.** At least two weeks prior to each session of Court, a copy of the calendar and public notice or press releases of the cases to be heard in the ensuing session will be prepared and disseminated by the Clerk of the Court and posted on the Court's website.

1.3 Responsibility of Panel Before Scheduled Sitting.

The justices of the Supreme Court have adopted and will maintain the practice of carefully reading briefs and reviewing appendices before oral argument or conference.

CHAPTER 2. ORAL ARGUMENT

2.1 Determination by Chief Justice; Notice to Counsel.

There is oral argument on a case if it is requested by a justice. In the absence of such request, the Chief Justice determines whether there will be oral argument and the amount of time allocated to each case, taking into consideration any requests of a justice or a party. The usual allocation of time is fifteen minutes per side. A request for oral argument time beyond fifteen minutes a side is determined by the Chief Justice. If not specified in the calendar released by the Clerk, no later than ten days before the sitting, the Chief Justice enters an order designating the cases to be argued and the Clerk distributes to the parties (through their counsel of record if appropriate) a copy of the order, which shall include the names of the members of the panel and the cases on which oral argument will be heard.

2.2 Failure to Notify Chief Justice.

Should a justice fail to notify the other justices of his or her views on oral argument

before noon of the eleventh day before the sitting, the Chief Justice shall assume that the non-notifying justice agrees to be bound by the determinations of the Chief Justice.

2.3 Suggested Criteria for Oral Argument.

2.3.1 Oral argument is usually unnecessary when:

- (a) The issue is narrow, not novel, and the briefs adequately cover the arguments;
- (b) The outcome of the appeal is clearly controlled by precedent;
- (c) The state of the record will determine the outcome and the sole issue is either sufficiency of the evidence, the adequacy of jury instructions, or rulings on admissibility of evidence, and the briefs adequately refer to the record; or
- (d) Only one party is represented by counsel or has appeared in the appellate proceedings.

2.3.2 Oral argument is often helpful when:

- (a) The appeal presents a substantial and novel legal issue;
- (b) The resolution of an issue presented by the appeal will be of institutional or precedential value;
- (c) A justice has questions to ask counsel to clarify an important legal, factual, or procedural point;
- (d) A decision, legislation, or an event subsequent to the filing of the last brief may significantly bear on the case; or
- (e) An important public interest may be affected.

2.4 Recording of Oral Argument

The Court may, in its discretion, record the oral arguments in any case. If recorded, audio and video broadcasts of oral arguments will be made available online at the Court's website, except for sealed cases.

CHAPTER 3. COMPOSITION OF COURT PANELS AND ORDER OF PRECEDENCE

3.1 Composition of Court Panel.

Each panel includes the three justices of the Court. If one or more justices are recused from a case, the panel shall be filled by Designated Justices appointed by the Chief Justice pursuant to 4 V.I.C. § 24(a) from senior or retired justices of this court, or senior, retired or active judges of the Superior Court or other Virgin Islands court of record. A remand from the Supreme Court of the United States is referred to the panel which decided the matter, unless two of the original panel members have left the bench or are otherwise unavailable.

3.2 Entering Court.

The justices enter the courtroom in the reverse order of precedence. Facing the courtroom from the bench, the Chief Justice (or Presiding Justice) is in the middle, with the most senior

Associate or Designated Justice stationed to the right and the junior Associate Justice or Designated Justice to the left of the Chief Justice. All remain standing until the Chief Justice sits.

CHAPTER 4. PANEL CONFERENCE PROCEDURE

4.1 Conference.

Following oral argument, the Court will convene in a conference. By unanimous agreement of the panel, conferences in cases submitted on the record may be held by telephone or videoconference or views may be exchanged by facsimile or electronic mail before the day of argument. After cases have been argued, the panel re-assembles in conference to confer and exchange tentative views on the merits of each case argued and submitted. Any case not completely conferenced immediately following oral argument may be conferenced later in person or by the means allowed for submitted cases.

4.2 Tentative Views and Opinion Assignment.

Discussion of the case will be opened by the prehearing assigned justice, these remarks being presented without interruption. Thereafter, each justice in inverse order of seniority may discuss the case without interruption. Following the initial discussion by each justice, if necessary, the discussion will go around the table a second time in the same order, at which time each justice may comment on the remarks and issues raised by the preceding justices, and, if not already expressed, each justice at their second turn will conclude with an indication of the proposed disposition of the case. At the conclusion of the conference, if it appears that the prehearing assigned justice is in the majority, the Chief Justice will normally assign the case to that justice for the preparation of the opinion of the court.

4.3 Memorandum of Decision.

As soon as practicable after the conclusion of the conference, but generally within two days, the justice assigned to prepare the opinion shall circulate to the panel a memorandum that briefly summarizes the agreed disposition of the case. If another justice of the panel believes that the circulated memorandum of decision does not accurately reflect the proposed disposition, he or she shall notify the assigned justice, who may take any appropriate action necessary to respond to the comments, such as circulating an amended memorandum or requesting that the matter be set for a new conference.

4.4 Reassignment. When it appears that the views of the justice to whom a case has been assigned are not concurred in by the majority of the panel, the Chief Justice may reassign the case to another justice of the panel who shares the majority view. If the panel is divided in its views and the Chief Justice does not concur in the decision of the majority, the assignment is made by that member of the majority who is the ranking Associate Justice or Designated Justice.

All communications regarding the proposed decision of the panel shall be treated as confidential and each chambers shall make necessary arrangements, with the assistance of the appellate law clerks and staff, to assure confidentiality is maintained.

4.5 Assignment on Justice's Unavailability.

4.5.1 Recusals and Unavailability. When a justice decides for any reason to recuse in a particular case to which that justice is assigned, the Clerk shall select, and the Chief Justice will designate a replacement for that justice where required.

Whenever a justice is recused after a case is submitted or argued, or for any other reason is unable to participate in the disposition of a case, the remaining members of the panel will consider whether the issues are of sufficient difficulty (including but not limited to whether they are unable to agree) to make it advisable or necessary to designate a third justice. If a third justice is designated after argument, the panel will decide whether the case will be reargued or whether the newly designated justice will hear or view the argument from the recording of the courtroom proceedings.

4.5.2 Absence From Argument. When a justice determines for any reason that the justice is unable to be physically or remotely present on the day argument is scheduled, the justice may participate in the decision of a case after listening to or viewing, if necessary, recordings of the oral argument. Otherwise, the Clerk shall select, and the Chief Justice will designate a replacement for that justice from available justices or designated justices.

CHAPTER 5. OPINIONS FORMAT

5.1 Forms of Opinions.

There are two forms of opinions: "for publication" and "not for publication". Unless a majority of the panel decides otherwise, an opinion shall be for publication.

5.2 For Publication Opinions.

An opinion, whether signed or per curiam, is published when it has precedential or institutional value. A per curiam opinion may be used for affirming, reversing, vacating, modifying, setting aside, or remanding the judgment, decree, or order appealed from, or for dismissing an appeal.

5.3 Not for Publication Opinions; Memorandum Opinions.

An opinion which the majority of the panel decides has value only to the trial court or the parties is not published. When the panel unanimously determines to affirm the judgment, order, or decision of the court under review, or to dismiss an appeal, and determines that a written opinion will have little or no precedential or institutional value, the author may choose to write a memorandum opinion briefly setting forth the reasons supporting the Court's decision as an alternative to preparation of a judgment order. Unless an opinion states that it is not for publication on its face, it shall be for publication.

5.4 Listing of Counsel and Judge.

The names of counsel and the Superior Court judge or magistrate who presided at the trial or entered the decision or order being reviewed are listed on all opinions, orders, and judgment orders.

5.5 Preparation and Circulation of Opinions.

5.5.1 By Author. The authoring justice prepares a draft opinion in accordance with the decision of the panel at conference, but the author may express any different views she or he may reach after further study of the case. The draft opinion shall set forth the reasons supporting the Court's decision.

5.5.2 Circulation Within Panel. After the draft opinion has been prepared, the authoring justice circulates it to the other two members of the panel with a request for approval or suggestions they may desire to make with respect to the draft opinion. Answering this request is given the highest priority by the other two justices, who shall communicate in writing their approval or disapproval within time deadlines specified in IOP 5.5.3(c). Absent a request for additional time, failure to respond within that time period shall be deemed an approval of the opinion as drafted. Because it is the opinion of the court, other members of the panel are free to make any suggestions relating to the modification of, addition to, or subtraction from the proposed text. Where a textual revision or addition is suggested, the suggesting justice submits his or her modification as tracked edits directly to the draft opinion or in specific language capable of being inserted into the opinion. When one of the other two justices approves, it becomes the proposed opinion of the court. Should the other panel members disagree with the author's draft, the opinion is reassigned by either the Chief Justice or the ranking justice who is a member of the panel's majority.

5.5.3 Time Schedule for Panel Drafting and Circulating Opinions; Reassignments.

The following procedures and time schedules govern the drafting and circulation of opinions:

(a). The justice to whom drafting is assigned will circulate a proposed opinion to the panel within 90 days of the date of assignment. Draft opinions in expedited cases will be transmitted to the other members of the panel within 30 days after assignment or after close of any supplemental briefing. The presumption is that the 90-day and 30-day period, respectively, will allow ample time for the preparation of an opinion, and instances where it is exceeded should be rare, involving, for example, cases of unusual complexity. Nevertheless, if the assigned justice concludes that the 90-day or 30-day limit cannot be complied with in a particular case, the justice will indicate that fact in a memorandum to the other panel members proposing a revised date of circulation, not to exceed an additional 90 day or 30 day extension, respectively. A copy of the memorandum will also be provided to the Chief Justice, if not a member of the panel. This requirement of a memorandum for extension will apply only to cases submitted to the panel after adoption of these revised Internal Operating Procedures.

(b). If a proposed opinion is not circulated within the time set forth above and a single extension as provided, the Chief Justice may reassign drafting of the opinion to another panel member after consultation with the panel.

(c). When a draft opinion has been circulated, the other justices on the panel will approve, disapprove, or make suggestions as to modifications of the draft within 21 days from its circulation. The other two justices shall respond within 10 days if the matter is being considered on an expedited basis. Responding to a circulated opinion is to be given the highest priority by the other two justices. If one of the other two justices approves, it becomes the proposed opinion of the Court. If no response is received from a panel member within the 21-day or 10-day period, respectively, that member is deemed to have approved the draft as circulated and the member's name will appear on the opinion as a participant.

If, within the 21-day or 10-day period, or after a second panel member approves the draft opinion, the third panel member desires to separately concur or dissent, the justice not joining in the opinion notifies the author promptly and transmits his or her separate opinion to the panel within sixty (60) days (or 20 days in expedited cases) after the second justice's approval is received, although this time may be extended, by agreement of the panel members, for a period not to exceed an additional 30 days or 10 days respectively. Except for revisions not affecting substance, panel opinions are not considered to be completed until each member has an opportunity for 3 days to revise his or her position in response to those of the other two panel members. The time limitations in this paragraph do not apply while a justice is ill or on leave.

(d). Once all responses are received from the panel members or the times provided for response has expired, the author of the circulating draft opinion may change the draft to accord with the comments received. If the changes are substantive or significant, a revised draft opinion will be circulated to the panel within 21 days or 10 days respectively, to which new responses will be made as provided above in the case of initially circulated drafts. If the changes are insignificant or technical, reapproval by the panel is not required.

(e). Should the other panel members disagree with the circulated draft, the opinion writing will be reassigned by the Chief Justice or presiding justice unless that justice is the opinion writer, in which event it will be reassigned by the senior justice in the new majority.

5.5.3. Priority in Opinion Writing

Priority in opinion writing, as far as practicable, will be given to:

(a) Expedited appeals, including, but not limited to, pre-trial bail or detention appeals, *see* 4 V.I.C. § 33(d)(3) & (4), time sensitive election appeals, and juvenile interlocutory appeals, *see* 5 V.I.C. § 2508; government appeals from pre-trial orders in criminal cases and other interlocutory appeals; appeals from orders of the Superior Court terminating parental rights or denying adoption petitions; and appeals from orders in juvenile custody and transfer for trial as an adult; certified questions of law; and cases holding an individual in contempt and imposing the sanction of imprisonment.

(b) After expedited appeals, priority in opinion writing ordinarily will be given to criminal appeals, habeas corpus appeals, and appeals from decisions with respect to juveniles alleged to be neglected, delinquent, or in need of supervision.

(c) Subject to the foregoing order of precedence, priority in opinion writing will be given:

(1) as set forth in other provisions of these Internal Operating Procedures, to dissenting and concurring opinions;

(2) to appeals in the order in which they were submitted to the panel for disposition. Cases which have been pending before the panel for over one year will be given the utmost priority whenever possible.

5.5.4. Redactions. In all opinions, published or unpublished, in appeals from an adjudication of delinquency or neglect, termination of parental rights, or an unconsented adoption, initials instead of names will be used to refer to individual persons who are parties. Initials will also be used in place of names to identify the victim in any appeal from a conviction or delinquency adjudication arising from a sexual assault.

5.6 Filing of Opinions.

5.6.1 Once an opinion has been approved by all three panel members, or all members of the panel have had the time set forth in IOP 5.5.3 to write separate opinions, the authoring justice may transmit the original typescript to the Clerk, together with concurring or dissenting opinions for filing. Absent a request to the authoring justice for additional time as provided in IOP 5.5.3(c), the failure of a panel member timely to file a separate concurring or dissenting opinion does not delay the filing of the majority opinion or the entry of the judgment of the Supreme Court.

5.6.2 Upon unanimous approval of all members of the panel, the opinion (and order) may be entered as a per curiam opinion, signifying that is the opinion of the Court. In such instance, the entered and distributed opinion (and order) shall not include a signature of any panel member. A sealed file copy of the opinion (and order) signed by the authoring justice shall be retained by the Clerk solely for authenticity purposes.

5.6.3 Copies of all opinions, orders, and judgment orders shall be filed with the Clerk in electronic form in Microsoft Office Word 7 or higher format simultaneously with the original typescript so that they may be maintained in the electronic archives and website of the Supreme Court and for publishing where appropriate.

5.6.4 When an opinion is released the authoring justice or the Reporter of Decisions shall prepare a brief summary describing the type of case and its holding, for posting on the Court's website and circulation to subscribers. Such summary is not part of the official opinion of the Court, has no legal effect, and may not be cited as authority, and has merely been added to help the public understand the case and the decision.

5.7 Citation to Judicial Dispositions.

5.7.1 Citation of Unpublished Dispositions.

(a) Dispositions of this Court. An unpublished judicial opinion, order, judgment or other written disposition of this court may be cited regardless of the date of issuance. The court will consider such dispositions for their persuasive value but not as binding precedent. A party must indicate in its brief or other filing that the disposition cited is unpublished. The term "unpublished" as used in this subsection and IOP 5.3 refers to a disposition that has not been selected for publication in the Virgin Islands Reporter.

(b) Dispositions of Other Courts. The citation of dispositions of other courts is governed by the rules of the issuing court. Notwithstanding the above, unpublished or nonprecedential dispositions of other courts may always be cited to establish a fact about the case before the court (for example, its procedural history) or when the binding or preclusive effect of the opinion, rather than its quality as precedent, is relevant to support a claim of res judicata, collateral estoppel, law of the case, double jeopardy, abuse of the writ, or other similar doctrine.

(c) Copies Required. If a party cites a judicial opinion, order, judgment, or other written disposition that is not available in a publicly accessible electronic database, the party must file and serve a copy of that opinion, order, judgment or disposition with the brief or other paper in which it is cited.

5.7.2 The Clerk shall promptly mail, electronically mail, telefax, or provide an electronic notice of the location of a copy of the opinion or dispositional order to each party.

5.7.3 The form and style of citations shall be as set forth in THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION as modified by the current "Style Guide for the Supreme Court of the Virgin Islands" Appendix to these IOPs.

CHAPTER 6. JUDGMENT ORDERS

6.1 Panel Unanimity.

A case may be terminated in the Supreme Court by a judgment order upon the unanimous decision of the panel.

6.2 Criteria.

6.2.1 A judgment order is filed when the panel unanimously determines to affirm the judgment or order of the Superior Court or to dismiss the appeal for lack of jurisdiction or otherwise, and determines that a written opinion will have no precedential or institutional value.

6.2.2 A judgment order may be used when:

- (a) The judgment of the Superior Court is based on findings of fact which are not clearly erroneous;
 - (b) Sufficient evidence supports a jury verdict;
 - (c) No error of law appears;
 - (d) The Superior Court did not abuse its discretion on matters addressed thereto;
- or
- (e) The Supreme Court has no jurisdiction.

6.3 Form of Order.

6.3.1 A judgment order affirming the Superior Court in a direct criminal appeal includes a statement of those issues raised by appellant and considered by the panel.

6.3.2 A judgment order may state that the case is affirmed by reference to the opinion of the Superior Court and may contain one or more references to cases or other authorities.

6.4 Procedure.

6.4.1 At conference, the panel decides whether the case requires an opinion or a judgment order. If the latter, the justice assigned to prepare the order furnishes other members of the panel with copies of the proposed order. The panel members indicate their approval either on a copy which is provided by the order writer or by signifying approval in writing by facsimile, electronic mail, or otherwise.

6.4.2 Absent a request for additional time within fourteen days of distribution, the authoring justice may transmit the original typescript to the Clerk for filing.

CHAPTER 7. ORDERS REVERSING OR REMANDING

7.1 Retention of Jurisdiction.

When a panel deems it appropriate for this Court to retain jurisdiction without disposing of an appeal and to remand the case to the lower court, such as for correction or modification of the record or for consideration of a settlement reached on appeal, the panel may do so and hold the appeal in abeyance. In such an instance, a panel has discretion to retain assignment of the case or return it to the Clerk for reassignment to a subsequent panel upon the return of the appeal to this Court.

7.2 Assignment Following Remand.

When an appeal is filed in a case which has previously been remanded, the Clerk will assign the appeal to a panel in the regular course unless directed otherwise by the Chief Justice after consultation with the original panel.

When a remand retains jurisdiction in the court, the case will be resubmitted to the same panel upon return to the court after remand.

7.3 Reversal or Remand.

In some instances when a panel reverses or remands a case to the lower court and it is not feasible to write an opinion, usually because the matter requires immediate attention, the panel enters a dispositive order setting forth briefly the reasons for its action. A more formal opinion may be released at a later date.

CHAPTER 8. PANEL REHEARING

8.1 Petition.

A petition for panel rehearing is sent to the members of the panel, with the request that each member notify the presiding justice of the panel within eight days of the date of the Clerk's letter forwarding the petition whether they vote to grant the petition or desire that an answer be filed. Non-response will be considered a vote against rehearing.

8.2 Request for Answer.

If any member of the majority gives timely notice that an answer is desired, the presiding justice of the panel enters an order directing the nonmovant to file an answer within ten days. The Clerk forwards the answer to the panel members with the request that they notify the Chief Justice within fourteen days of receipt of the answer if they vote to grant the petition. A justice who does not desire rehearing is not expected to respond.

8.3 Disposition.

If two members of the panel vote therefor, the Chief Justice enters an order granting panel rehearing and vacating the panel's opinion and the judgment entered thereon. Otherwise, the Chief Justice enters the order denying panel rehearing. Any member of the panel may file an opinion sur denial of the petition for panel rehearing and direct its publication.

CHAPTER 9. MOTION PRACTICE

9.1 Assignment and Distribution.

9.1.1 Motions are decided by the Chief Justice, an Associate Justice, the panel, or the Clerk, as provided by Virgin Islands law, the Virgin Islands Supreme Court Rules, and as allocated in these IOPs. Each month a single justice shall be assigned, on a rotating basis, as the monthly "Motion Justice" with the responsibility to dispose of all appropriate motions filed during the assigned month.

9.1.2 When an emergency motion is filed, the movant may be directed by the Clerk to deliver by hand or by transmission via email or facsimile copies of the moving papers that day to the Chief Justice, the Motion Justice or each member of the panel, respectively, at the chambers where the respective justices or Designated Justices are stationed, or at such other place as the Clerk may designate.

9.1.3 Motions on non-emergency matters are distributed to the Chief Justice, the Associate Justices, the Motion Justice or each member of the panel as they are complete, i.e., when responses have been filed.

9.1.4 A motion for reconsideration or rehearing of decision on a motion is referred to the Chief Justice, the Motion Justice or panel which decided the motion.

9.1.5 Whether there shall be oral argument on a motion is determined in the same manner as for an appeal.

9.2 Motions Referred to Clerk.

The Clerk may dispose of any category of motion other than those, which by statute or rule, must be decided by justices.

9.3 Single-Justice Motions.

9.3.1 The Chief Justice may rule on motions as provided under 4 V.I.C. section 31(b), including motions to dismiss, unless the Chief Justice believes reference to a panel is appropriate. A single justice may not determine or dismiss an appeal on the merits. The actions of a single justice, other than those committed to the Chief Justice under 4 V.I.C. section 31(b), may be reviewed by the panel to which the matter is or would have been referred. Motions related to scheduling cases for briefing and argument are decided by the presiding justice of the panel per IOP 2.1.

9.3.2 Without limiting IOP 9.3.1, a motion is referred to the Chief Justice, who either refers it to the panel or rules on the motion if it is one of the following matters appropriate for decision by a single justice:

- (a) Substitution or withdrawal of counsel; appointment of counsel;
- (b) Dismissal for failure to prosecute or dismissal of an untimely appeal;
- (c) Other issues ordinarily left to the discretion of a single justice; matter(s) that do not address the merits of the issue(s) on appeal.

9.3.3 Without limiting IOP 9.3.1, routine motions for extensions of time for filing briefs and administrative matters may be decided by a single justice or, if authorized by appellate rule, the Clerk.

9.4 Summary Action.

Without limiting IOP 9.3.1, a panel, sua sponte or upon motion by a party, may take summary action affirming, reversing, vacating, modifying, setting aside, or remanding the judgment, decree, or order appealed from, or dismissing an appeal if it clearly appears that no substantial question is presented or that subsequent precedent or a change in circumstances warrants such action. Before taking summary action, the panel will afford the parties an opportunity to submit argument in support of or in opposition to such disposition if briefs on the

merits have not already been filed. Summary action may be taken only by unanimous vote of the panel. If the panel determines that summary action is not appropriate, it may, in lieu of denial, defer ruling until the merits of the appeal are considered on submission or upon oral argument.

9.5 Post-Decision Motions.

9.5.1 Unless the Clerk, the Motion Justice or Associate Justice has been designated to act thereon, a motion for extension of time for filing a petition for rehearing or for leave to file out of time is referred to the Chief Justice, who has authority to grant an extension of time.

9.5.2 A motion for stay of mandate or for recall of the mandate, for certified judgment in lieu thereof, or a motion to amend a judgment is referred to the Chief Justice who, in his or her discretion, may refer it to the entire panel that made the decision. Such a motion is not ordinarily granted unless the failure to grant the relief affects a substantive right of the movant.

9.5.3 A motion to extend time to file a bill of costs is determined by the Clerk. An appeal from the Clerk's ruling is referred to the Chief Justice.

CHAPTER 10. RECUSAL OR DISQUALIFICATION OF JUSTICES

10.1 Procedure.

10.1.1 Before or at the same time that cases are sent to a panel, the Clerk transmits copies of the docket sheets to each justice. Any justice who is recused from a case promptly so informs the Clerk.

10.1.2 Each justice who serves on the Supreme Court should submit to the Clerk in writing those circumstances which would generally require a recusal, including names of businesses in which the justice or family members have a financial interest, names of lawyer relatives whose names may appear as counsel in the appeals, and names of law firms on whose cases the justice does not sit.

10.1.3 A justice who finds it necessary to recuse herself or himself from a case after distribution of briefs or a motion immediately notifies the Chief Justice. The Chief Justice names a substitute and reconstitutes the panel for that case or reassigns the case to a subsequent panel by written order.

10.2 Circumstances.

10.2.1 A justice shall recuse himself or herself in the following circumstances and pursuant to 4 V.I.C. § 284:

- (a) Where a justice has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
- (b) Where, in practice, the justice served as a lawyer on the matter in controversy, or a lawyer with whom he or she previously practiced law served during such association

as a lawyer concerning the matter, or the justice or such lawyer has been a material witness concerning it;

(c) Where the justice has served in governmental employment and in such capacity participated as counsel, advisor, or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(d) The justice knows that he or she, individually or as a fiduciary, or spouse or minor child residing in the justice's household, has a financial interest in the subject matter in controversy or is a party to the proceeding, or any interest that could be substantially affected by the outcome of the proceeding;

(e) The justice, the justice's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Is acting as a lawyer in the proceeding;

(iii) Is known by the justice to have an interest that could be substantially affected by the outcome of the proceeding; or

(iv) Is to the justice's knowledge likely to be a material witness in the proceeding.

10.2.2 A justice should inform herself or himself about her or his personal and fiduciary financial interests, and make a reasonable effort to inform himself or herself about the personal financial interests of his or her spouse and minor children residing in the justice's household.

10.2.3 For the purposes of this section, the following words or phrases shall have the meaning indicated:

(a) "Proceeding" includes pretrial, trial, appellate review, or other stages of litigation;

(b) The degree of relationship is calculated according to the civil law system;

(c) "Fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(d) "Financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

(i) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the justice participates in the management of the fund;

(ii) An office in an educational, religious, charitable, fraternal, or civil organization is not a "financial interest" in securities held by the organization;

(iii) The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) Ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

10.2.4 No justice shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection 10.2.1.

10.2.5 Previous Employment. During the justice's first two years after leaving a law firm, a justice is not assigned any case in which the former law firm has entered an appearance.

10.2.6 Relationships. According to the civil law system, the third degree of relationship's test would, for example, disqualify the justice if her or his or the justice's spouse's father, grandfather, uncle, brother, or niece's husband were a party or lawyer in the proceedings, but would not disqualify her or him if a cousin were a party or lawyer in the proceedings.

10.2.7 Disclosure. The reasons for disqualification are not disclosed to the parties.

10.2.8 Rule of Necessity. The rule of necessity is an exception to the principle that every litigant is entitled to be heard by a judge who is not subject to any disqualifications which might reasonably cause the judge's impartiality to be questioned. *See* Canon 3(C), Code of Judicial Conduct. The rule of necessity has been invoked where disqualifications exist as to all members of the state judiciary who would normally hear a matter. Rather than deny a party access to court, judicial disqualification yields to the demands of necessity.

10.3 Appointment of Designated Justices

10.3.1. Appointment Authority. Whenever a Justice is unable to hear a case due to recusal, illness, absence, or other reason, the Chief Justice may, consistent with title 4, section 24 of the Virgin Islands Code:

- (1) appoint any active judge of the Superior Court to sit as a Designated Justice of the Supreme Court;
- (2) appoint, with his or her consent, a senior or retired justice of the Supreme Court or a senior or retired judge of the Superior Court to sit as a Designated Justice; and
- (3) appoint, with his or her consent, an active, senior, or retired judge of the District Court of the Virgin Islands to sit as a Designated Justice.

For purposes of the Chief Justice's appointment authority,

- (1) an "active" judge is, as the case may be,
 - (i) a judge of the Superior Court of the Virgin Islands presently holding office pursuant to section 73 of title 4; and
 - (ii) a judge of the District Court of the Virgin Islands presently holding office pursuant to 48 U.S.C. § 1614.
- (2) A "senior" judge or justice is, as the case may be,
 - (i) a former justice of the Supreme Court who elected to retire and be designated as a senior justice in accordance with section 24(b)(2) of title 4;

- (ii) a former judge of the Superior Court designated by the Presiding Judge of the Superior Court as a senior sitting judge pursuant to section 74a of title 4, or a retired judge of the Superior Court who has retired on a retirement allowance who has been recalled to service within the Superior Court by the Chief Justice pursuant to section 24(b)(3) of title 4; and
 - (iii) a former judge of the District Court recalled to service in the District Court by the Chief Judge of the United States Court of Appeals for the Third Circuit pursuant to 28 U.S.C. § 373(c).
- (3) A “retired” judicial officer is any former justice of the Supreme Court, former judge of the Superior Court, or former judge of the District Court who is not serving as a senior judicial officer, regardless of whether the judicial officer is receiving a retirement allowance, and excluding those judicial officers who
- (i) were involuntarily removed from office by the Commission on Judicial Conduct or otherwise;
 - (ii) returned to the private practice of law or otherwise hold a position or employment that is inconsistent with further judicial service; or
 - (iii) have been transferred to disability inactive status or who are presently suspended or disbarred from the Virgin Islands Bar Association.
- (4) A judicial officer “who has retired on retirement allowance” is, as the case may be, a former justice of the Supreme Court or former judge of the Superior Court receiving a retirement annuity pursuant to sections 733 or 770(1) of title 3 of the Virgin Islands Code, or a former judge of the District Court receiving a retirement annuity pursuant to 28 U.S.C. § 373(a).

10.3.2. Procedure for Appointment. The Clerk of the Supreme Court shall maintain a list of all active, senior, and retired judicial officers eligible to serve as a Designated Justice, which shall be organized into eight enumerated groups:

- (1) all senior justices of the Supreme Court;
- (2) all retired justices of the Supreme Court;
- (3) all active judges of the Superior Court;
- (4) all senior judges of the Superior Court;
- (5) all retired judges of the Superior Court;
- (6) all active judges of the District Court;
- (7) all senior judges of the District Court; and
- (8) all retired judges of the District Court.

In the event recusal, illness, absence, or other reason requires appointment of a Designated Justice to hear a specific case in the Supreme Court, the Chief Justice, with the assistance of the Clerk, shall consider the appointment of an individual from the first group. In

the event no individual from that group is available to serve, the Chief Justice shall consider an appointment from the second group, and each successive group thereafter until a Designated Justice is selected. To the extent possible, appointments within each group shall be made on a rotating basis. Upon receiving notice from the Clerk that a potential Designated Justice has been identified and, in the case of senior and retired judicial officers, that the individual has consented to the designation, the Chief Justice shall enter an order appointing the Designated Justice, which shall be assigned a miscellaneous case number and shall specify the particular case the Designated Justice shall hear. In all cases, the appointment of an individual as a Designated Justice shall not become effective until they have executed the Oath of Office for the position.

10.3.3 Expenses; Per Diem; Office Supplies.

- (1) While serving as a Designated Justice, all senior and retired justices and judges shall be reimbursed for their reasonable expenses actually incurred in conjunction with their service, and shall receive from the Supreme Court a per-diem allowance equivalent to 1/260 of the annual salary for an Associate Justice.
- (2) No judicial officer may receive a per-diem allowance while serving as a Designated Justice unless he or she has devoted at least two hours to their duties for the day the per-diem is claimed, and no judicial officer shall receive a per-diem for working on a Saturday, Sunday, or government holiday.
- (3) The Administrative Director of the Supreme Court shall insure that all senior or retired justices and judges, while performing the duties of a Designated Justice, be provided with office space, support staff, and appropriate supplies as needed, provided that the senior or retired judicial officer has not already received office space, support staff, and appropriate supplies in conjunction with another judicial appointment.

CHAPTER 11. APPELLATE LAW CLERKS

11.1 Supreme Court Appellate Law Clerks and Staff Attorneys.

There shall be law clerks assigned to each Justice who shall work under the supervision of the respective justices and staff attorneys who shall assist the Clerk in addressing motions and the panels and justices as they sit. An appellate law clerk is accountable directly to the Justice that hired him or her, while a staff attorney is accountable to the entire panel and the Clerk.

11.2 Duties of Law Clerks.

The duties of law clerks shall include the following:

11.2.1 Preparation of memoranda of law and fact on the merits, as well as a recommendation as to disposition upon request.

11.2.2 Screening all appeals and petitions for writs filed for jurisdictional defects, tracking and processing all appeals in, communicating with panel justices to facilitate the swift determination of appeals, assisting the Justices in disposing of motions if requested, and assisting in the drafting of opinions and orders.

11.2.3 Perform such other legal duties as assigned.

11.3 Duties of Staff Attorneys

The duties of staff attorneys shall include the following:

11.3.1 Preliminary review of the jurisdictional basis for all appeals.

11.3.2 Review of all filings for compliance with Court rules.

11.3.3 Coordinate requests for extensions of time by parties or court reporters.

11.3.4 Review of all petitions for writs and *pro se* filings.

11.3.5 Assisting the Clerk of the Court in the scheduling of cases and the securing of supplemental filings.

11.3.6 Undertake independent research and draft legal memorandums and orders as requested.

11.3.7 Assist the motion Justice as requested.

11.3.8 Perform such other legal duties as assigned.

11.4 Guidelines.

The following rules and guidelines apply to law clerks and, where applicable, to staff attorneys:

11.4.1 Discussion of pending cases. Unless the Justices specifically agree otherwise in a given case, it is the Court's general policy for the Justices not to discuss, debate or confer regarding the merits or substantive issues of pending cases until they are conferenced. The same policy applies to law clerks. Thus, law clerks are instructed that unless the Court specifically requests a law clerk to do so, any such communications or exchanges of memoranda or views between clerks assigned to different Justices are avoided until the Court has conferred and issued its memorandum of decision or has agreed upon a disposition. This does not preclude such common courtesies as providing photocopies of cases or portions of the record which one clerk has readily available and can easily provide to others. When assigned to assist the Clerk or a specific Justice, a staff attorney shall also be precluded from discussing a matter with another chambers unless specifically requested to do so.

11.4.2 Job offers. The law clerks are permitted to accept job offers during their clerkships, but will not be able to accept the payment of any bonuses or moving expenses until their clerkships end. However, during the tenure of their clerkship, they are permitted to have their expenses of traveling to and from an interview reimbursed by the prospective employer. They are also able to be reimbursed by the prospective employer for the expenses of taking the bar examination and the bar review course.

11.4.3 Disqualification. There is no disqualification *per se* for a law clerk to work on a case involving the firm from which the law clerk has accepted a job offer. Those assignments will be left to the discretion of the individual Justice. A law clerk is not permitted to work on a case on which the law clerk worked or of which the law clerk had knowledge prior to the clerkship.

11.4.4 Outside employment. No law clerk may take a job during the clerkship other than the clerkship without the prior authorization of the law clerk's primary Justice. No staff attorney may engage in outside employment with the prior authorization of the Chief Justice.

11.4.5 Political activity. No law clerk or staff attorney may be politically active during their employment with the Court.

11.4.6 Confidentiality. Each law clerk and staff attorney must maintain complete confidentiality about everything related to cases in this Court.

11.4.7 Internal discussions. There should be no discussion on anything relating to a case except among persons within the Supreme Court chambers who have a need to know and who are directly involved in preparing for any activity which may take place before the Court. There should **never, ever** be any discussion with anyone not in the need-to-know group within chambers.

11.4.8 Computers. Access to any computer must be secured and restricted at all times.

11.4.9 Written material.

(a) **Disposal.** Any paper with handwriting or any paper typed within chambers should be torn up or shredded when it is discarded.

(b) **Security in public.** Any paper taken into a public place such as a library, airplane, or motor vehicle, must be secured and cared for in a way which maintains confidentiality.

11.4.10 Public discussion. Conversations outside of chambers must maintain confidentiality. This includes even the most seemingly innocuous discussions about timing or preparations for hearings.

11.4.11 Trading in securities. There should be no trading in securities in any matter involving entities which are before this Court.

CHAPTER 12. COURT ADMINISTRATION

12.1 Supervisory powers.

The Chief Justice has general oversight of all Courts of the Virgin Islands. Approval by a majority of the Justices of the Supreme Court is required for the adoption of rules for the administration of justice and the conduct of the business of all the Courts of the Virgin Islands.

12.2 Administrative Meetings.

(a) **Scheduling.** The Justices of the Supreme Court shall generally meet monthly, but not less than bi-monthly, to discuss administrative matters.

(b) **Agenda.** The Chief Justice is responsible for distributing an agenda. When an Associate Justice desires to have an item placed on the administrative agenda, the Associate Justice notifies the Chief Justice and sends a copy of the item to each Justice. When preparing the agenda, the Chief Justice (or the Chief Justice's Secretary or other designee) assigns a sequential number to each item. The number includes the year in which it is first placed on the agenda, and that number is retained until the matter is concluded.

(c) **Minutes.** In the absence of staff, the junior Associate Justice shall keep minutes of the administrative meetings.

12.3 Liaison Justices.

The Chief Justice appoints Justices to many administrative committees and designates Justices to act as liaisons between the Supreme Court and other courts and boards or committees established by the Supreme Court including:

- (a) All trial courts.
- (b) Committee of Bar Examiners.
- (c) Ethics & Grievance Committee.
- (d) Advisory Committee on Rules.
- (e) Virgin Islands Courts' Planning Committee.
- (f) Other Court Committees.

12.4 Clerk of the Supreme Court.

The Chief Justice shall appoint the Clerk of the Supreme Court, who working under the direction of the Chief Justice, establishes a Clerk's Office to operate the day-to-day functions of the Court and perform such duties as required by statute and the direction of the Court.

12.5 Clerk's Office.

12.5.1 Attendance at Court Sessions. The clerk or a designee of the clerk shall attend all sessions of the Court and make arrangements for courtroom and other facilities in ample time prior to each sitting.

12.5.2 Routing of Documents. The Clerk's office circulates documents to the Justices with a color coded routing slip which indicates the action to be taken by the Justice.

12.5.3 Action Requiring Judicial Approval. External written communications by the Clerk's office generally require the prior approval of a Justice. Exceptions to that general rule are included in the Motion Practice section.

12.6 Administrative Office

12.6.1 Function. There shall be established an Office of the Administrative Director. This office will be concerned *inter alia* with appropriations, budgets, accounting, information systems, technical assistance, training, records management, facilities, statistics, reports and personnel of the Virgin Islands Supreme Court. The Administrative Office shall be headed and managed by the Administrative Director

12.6.2 Administrative Director. The Administrative Director is selected by and works under the direction of the Chief Justice.

12.7 Attire.

12.7.1 The Court shall select and purchase the official robe to be worn by each justice at official functions.

12.7.2 At all official functions of the Court, at which the Court is present in a body, the justices will ordinarily wear their official robes.

12.7.3 A justice, while in the performance of official functions, such as swearing-in of government officials or others, or performance of marriage ceremonies, shall normally wear the official robe.

12.8 Photographs of Justices.

12.8.1 Official photographs of the justices shall be taken annually. Sufficient copies

shall be obtained so that one copy may be presented to each justice and one copy shall be kept for a permanent record in the clerk's office, and requisite copies made available for use by the news media.

12.8.2 The costs of such photographs shall be paid out of the Court's appropriation. Photographs of newly appointed justices or a newly selected chief justice shall be taken, framed and paid out of the Court's appropriation. All photographs of the justices shall be, as nearly as possible, of standardized size and framing.

CHAPTER 13. COMMUNICATIONS WITH AND BY THE COURT

13.1 External. Contacts outside the courtroom between the Court and attorneys, or the public, involving matters pending before the Court, are conducted either through the Clerk's office or with the Chief Staff Attorney. The Clerk and the Chief Staff Attorney are in frequent communication with the Chief Justice, the motion Justice, and the other Justices. When the Clerk and the Chief Staff Attorney speak for the Court on procedural and scheduling matters, they are not authorized to waive the requirements of any statute or rule.

13.2 Internal. Since the Supreme Court is a collegial court, the Justices confer freely with each other, either in writing (often by fax or electronic mail), by telephone or video conference, or in person.

13.3 Absence from chambers. The Chief Justice maintains a master calendar. Each Justice advises the Chief Justice of any contemplated absence from the office in advance whenever possible. In addition, whenever a Justice contemplates being absent from chambers for more than 24 hours, a written memorandum is sent to all Justices at least seven days ahead of time with the name, address, telephone number, and fax number where the Justice can be reached. A copy of that memorandum should also be sent to the Administrative Director and the Clerk.