

INTERIM¹

Virgin Islands Electronic Filing Rules

Rule 1. Applicability; Citation.

These rules shall be known as the “Virgin Islands Electronic Filing Rules,” and may be cited in short form as V.I. E-FILE R. These rules govern the electronic filing and service of documents in the Virgin Islands courts. These rules supersede other Virgin Islands procedural rules in such matters as filing, format, and service. In case of any conflict these rules prevail.

Rule 2. Definitions.

(a) “Clerk of court” means the official custodian of the court record for the case in question, which may be the clerk of the Supreme Court or clerk of the Superior Court, or his or her designee.

(b) “Confidential information” means information excluded from public access by Virgin Islands law or other applicable law, including court rule, court order, or case law.

(c) “Conventional methods” means any other authorized methods of filing and serving documents other than electronic filing, including but not limited to the submission of a paper document.

(d) “Document” means a related and paginated grouping of information items contained in a record that can be in electronic or paper form.

(e) “Electronic” means technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities. For governmental agencies this may include alternate software to exchange electronic records with the court’s electronic document management system.

(f) “Electronic filing system” or “Virgin Islands Judiciary Electronic Filing System” or “VIJEFS” means a web-based system established by the Virgin Islands Judiciary for the purpose of filing documents with or by a court, integrating them into the Virgin Islands Judiciary Electronic Case Management System (VIJECMS), or “electronic case management system,” and electronically serving notice to the parties who have registered with the electronic filing system.

¹ These Interim Electronic Filing Rules are adopted to facilitate the prompt implementation of electronic filing of documents in the courts of the Virgin Islands. They will be further vetted, revised, and refined by the Rules Advisory Committee for final adoption by the Supreme Court.

(g) “Electronic filing” means electronically transmitting a document through the VIJEFS to the VIJECMS consistent with these Rules, together with the transmission of a Notice of Electronic Filing from the VIJEFS. Electronic filing does not include alternative methods of filing, such as electronic mail, facsimile, USB drive, CD-ROMs, floppy disks, or other electronic methods.

(h) “Electronic service” means the electronic transmission of a notice to registered filers entitled to receive notice that they may view and download filed documents.

(i) “Electronic signature” means an electronic sound, symbol, or process attached to or logically associated with a document, that can be executed or adopted by the user with the intent to sign the document in the same manner as a handwritten signature. This can include the name of the user preceded by “/s/”, i.e. “/s/ John R. Smith”, or an image of a handwritten signature.

(j) “Filer” means a user electronically filing a document through the VIJEFS.

(k) “Initiating document” means a summons and complaint, information, criminal complaint, citation, petition, notice of appeal, application, or any other document filed to commence a court case.

(l) “Legal Organization” means all support staff that an attorney authorized to e-file on his or her behalf by registration of that support staff on the VIJEFS. All e-filings by support staff in a Legal Organization are treated as filed by the attorney.

(m) “Lodged” means placing a document in a court file without officially filing it.

(n) “PDF” means an electronic document filed in a portable document format which is readable by the free Adobe® Acrobat® Reader.

(o) “Submission number” means the unique number associated with every filing, synonymous with a confirmation number.

(p) “User” means an individual who has registered to use the electronic filing system under Rule 4.

Rule 3. Scope.

(a) Unless otherwise required or authorized by these rules, all documents in cases commenced on or after the initiation of electronic filing in the Superior Court and Supreme Court of the Virgin Islands must be filed using the VIJEFS.

(b) Each clerk of court is responsible for maintaining an electronic case file in the respective court's electronic case management system for all cases filed under these rules, receiving case filings into the VIJECMS by electronic transmission using the VIJEFS, and scanning documents into the electronic case management system that have been filed through conventional methods.

Rule 4. Registration.

(a) *Registration.*

(1) *Registration Required.* User registration is required to file documents in a case governed by these rules, to download documents filed in the electronic case management system, and to remotely access documents filed in the electronic case management system.

(2) *How to Register.* To register, filers, users, and self-represented litigants must complete the registration form located at the website www.vicourts.org and obtain a login and password for the electronic filing system.

(3) *Mandatory Registration.* The following individuals are required to register to use the electronic filing system:

(A). All individuals admitted to the practice of law in the Virgin Islands, both active or inactive, and whether regularly admitted, specially admitted, admitted *pro hac vice*, or admitted pursuant to a limited license to practice as in-house counsel, foreign legal consultant, or legal intern; as well as any designated staff associated with the individual's legal organization;

(B). Court employees whose duties necessitate access to the system;
and

(C). Other individuals as appointed or ordered by the court.

Before registering to use the electronic document management system, an out-of-jurisdiction lawyer must first be admitted *pro hac vice* pursuant to Supreme Court Rule 201. If admitted *pro hac vice*, the out-of-jurisdiction lawyer shall complete the registration process located at www.vicourts.org.

Individuals required to register under this rule may request an exemption from electronic filing, either for purposes of a particular document, for an entire case, or for all cases by filing a motion for exemption. Motions for exemption from all cases shall be docketed as a separate original proceeding and determined by the Administrator of Courts (or designee), while motions for exemption from electronic filing in a particular case or with respect to a particular document shall be docketed as part of the case in which the exemption is being sought and determined by the Clerk of Court. If granted this exemption would permit the individual to exclusively file and serve documents through conventional methods. Such exemptions are disfavored, and shall not be granted solely because the

individual is unfamiliar with technology or prefers conventional methods of filing and service.

Self-represented litigants may, but are not required to, register as users of the electronic filing system. If a self-represented person chooses to register, the person is governed by these rules in the same manner as any registered filer. If the person later desires to be excused from registration, the person must apply for and receive an exception pursuant to these rules.

(4) *Registration Complete.* When the registration process is completed and a login and password are assigned, the individual or entity may utilize the electronic filing system.

(5) *Changing Passwords.* Once registered, individuals or entities may change their password. If the registered individual or entity believes the security of an existing password has been compromised, the registered individual or entity must change the password immediately and notify the clerk. The Judicial Branch may require password changes periodically.

(6) *Changes in Filer's Contact Information.* If a registered filer's e-mail address, mailing address, or telephone number changes, the filer must promptly make the necessary changes to the registered filer's information contained in the registration system. The filer shall provide notice of changes in contact information to any non-registered filer in every active case. If the filer is an attorney required to file an annual registration statement pursuant to Supreme Court Rule 203(e), the filer shall file an amended annual registration statement in addition to making the necessary changes in the registration system.

(7) *Duties of Registered Filer.* Each registered filer shall ensure that the filer's electronic filing system e-mail account information is current, that the account is monitored regularly, and that e-mail notices sent to the account are timely opened.

(b) *Logins and Passwords.* To file documents in a court utilizing the electronic filing system, a filer must use a login and password.

(1) A registered filer is responsible for all documents filed with the filer's login and password.

(2) A registered filer shall not knowingly cause or permit the registered filer's login or password to be used by any other person. An authorized member or staff of a lawyer's legal organization filing a document on behalf of the lawyer shall do so using his or her own login and password, and not that of the lawyer.

(3) Any electronic filing, downloading, or viewing of an electronic file made by use of a login and password shall be deemed to be made with the authorization of the person registered to use the login and password, unless and until otherwise determined by the court before which the matter is pending.

(4) If a login or password is lost, misappropriated, misused, or compromised in any way, the person registered to use that login or password must promptly notify each clerk of court. For system security reasons, a registration

may be immediately suspended. The registered individual or entity may apply for a new password and login by completing a new registration. If a login and password have been lost, misappropriated, misused, or compromised in any way, the court may cancel the registration.

(5) For good cause, the Judicial Branch may refuse to allow a user or a filer to electronically file or download information in the electronic filing and case management system. The affected user or filer may file an application with the Judicial Branch to re-register.

Rule 5. Time and Effect of Electronic Filing.

(a) The filer is responsible for designating the court to which the document is transmitted. The VIJEFS shall issue a submission number or other confirmation that submission to the VIJEFS is complete. E-mailing or faxing a document or otherwise submitting it to the court outside of the VIJEFS does not constitute “electronic filing” of the document.

(b) Documents electronically submitted and approved by the clerk shall receive an electronic file stamp indicating when the document was filed.

(c) The VIJEFS shall receive electronic filings 24 hours per day, including holidays and weekends, except when undergoing maintenance or repair. A document is timely filed if it is submitted to the VIJEFS at or before 11:59 PM Atlantic Standard Time on the date the filing is due.

(d) The clerk of court shall review the document to determine if the document should be accepted for filing. If the clerk accepts the document, the document shall be considered filed with the court on the date the original submission to the electronic filing system was complete, as specified in Rule 5(c). Upon acceptance, the electronic filing system shall issue a confirmation. If the clerk rejects the document, the document shall not become part of the court record and the filer shall receive notification of the rejection.

Given the severe consequences of rejection, a clerk shall not reject a document under this rule solely for technical defects (i.e. an incorrect case caption or case number; the failure to include a certificate of service or proposed order). In the event that the clerk observes a deficiency in the filing, the clerk shall accept the document, but note it in the case file, advise the filer about the error by either telephone, electronic mail or similar means, and authorize the submission of an amended document within a designated time frame. The corrected documents shall receive the same docket entry information, beginning with the word “CORRECTED.”

(e) *Correcting Errors.*

(1) *Clerk to Correct Docket Entries.* Once a document is submitted into the electronic case management system, only the clerk may make corrections to the docket.

(2) *Errors Discovered by Filer.* If a filer discovers an error in the electronic filing or docketing of a document after it has been accepted, the filer may file a notice of the erroneous filing or docketing, setting forth the nature of the error and requesting leave of the court to substitute the electronic filing.

(3) *Errors Discovered by Clerk.* If errors in the filing or docketing of a document are discovered by the clerk after it has been accepted, the clerk will ordinarily notify the filer of the error and advise the filer of what further action, if any, is required to address the error. If the error is a minor one, the clerk may disregard the error.

Rule 6. Commencement of Action.

(a) If the clerk of court accepts an initiating document for filing, the clerk of court shall assign a case number and electronically place the clerk's filing stamp and case number on each document. The electronic filing system shall send a notice to the filer that the filing has been accepted and is available through the VIJEFS.

(b) Initiating documents shall be served by conventional methods unless the responding party has consented to accept electronic notice or service by some other method as allowed by statute or court rule.

Rule 7. Filing and Service of Subsequent Documents.

(a) *Documents That May be Filed Electronically:*

1. Electronic filing of a document shall be mandatory in all actions or proceedings unless court rules or other legal authority expressly prohibit electronic filing.

2. Where the law requires the filing of an original document, such as a mortgage document, birth certificate, death certificate, foreign judgment or other certified or verified document, the filer shall scan the original document and file the scanned document with the VIJEFS. The filer shall retain the original document for a period of no less than two years after the conclusion of the case or the conclusion of an appeal, whichever is later, unless a longer retention period is required by law. The filer shall immediately deliver the original document to the court upon request of the court or the other party for inspection and preservation, if necessary.

3. The court shall permit electronic filing of an application for waiver or partial waiver of court fees and costs in any proceeding in which the court accepts electronic filings.

4. The court may electronically file any notice, order, text only entry or order, minute entry, judgment, or other document prepared by the court. The clerk of court may also electronically provide subpoenas to a registered filer.

5. Exhibits offered at trials or hearings that are capable of being maintained in an electronic format shall, unless otherwise ordered by the court, be maintained electronically for purposes of the official court record. For example, photographs may be converted into digital images.

6. Proposed orders shall be filed and submitted electronically through the VIJEFS, using Docket Type "Notice" and Subtype "Proposed Order." Filers are strongly encouraged to not submit proposed orders in PDF format but to instead file them in an editable format capable of being read by Microsoft Word.

7. Effect of document filed electronically:

(A) A document that the court or a party files electronically under these rules has the same legal effect as a document in paper form.

(B) The calculation of time under other statutes and rules is neither expanded nor contracted by this section.

(C) Once accepted by the clerk, electronically filed documents are immediately viewable by all parties on the case. If a user intends to file *ex parte* matters, consideration should be given to submitting the documents outside the electronic filing system.

8. The electronic filing system shall not be used for the electronic exchange of discovery materials and other communications between the parties that are not intended to be filed with the court.

9. If a document is intended or ordered to be lodged in a case, it shall be conventionally submitted to the clerk of court, since electronic filing is limited to those documents which are officially filed with the case.

(b) Electronic Notice of Service:

1. When a document may be served by mail, express mail, overnight delivery, or fax transmission, electronic notification of service of the document is permitted when authorized by these rules.

2. A party agrees to accept electronic notification of service by:

(A) Serving a notice on all parties that the party accepts electronic service and filing the notice with the court. The notice shall include the electronic service address at which the party agrees to accept service; or

(B) Electronically filing any document with the court using the electronic filing system. The act of electronic filing is evidence that the party agrees to accept notification of service at the electronic service

address the party specified when registering as a user of the electronic filing system.

3. Parties are responsible for service on all other parties in the case. A party may serve documents electronically by electronic mail, by an agent, or through the electronic filing system.

4. A registered user whose electronic service address changes while the action or proceeding is pending shall update his/her electronic service address in the electronic filing system.

5. An electronic service address is presumed valid for a party if the party files electronic documents with the court from that address and has not filed notice that the address is no longer valid.

6. Electronic service of a document is complete at the time the electronic notification of the filing of the document is sent, together with a hyperlink to the submitted document.

(c) Proof of Service:

1. The Certificate of electronic service shall state:

(A) The electronic signature of the person making service, including a filed-on-behalf-of statement if the person making the service is filing on behalf of the attorney of record;

(B) The date of service;

(C) The name and address of the person served unless the address is legally protected; and

(D) The manner by which the document was served.

2. Proof of electronic service may be in electronic form and may be filed electronically with the court.

3. The court may electronically serve any notice, order, judgment, or other document issued by the court in the same manner that parties may serve documents by electronic service.

Rule 8. Payment of Fees.

(a) Unless otherwise ordered by the court or permitted by the Judicial Branch Administrative Office, users shall make payment of filing and other fees due to the clerk of a court electronically through the online payment portal maintained by the Judicial Branch unless otherwise ordered by the court or other arrangements are made with the clerk of court.

(b) When applicable, users may submit a request for waiver of fees through the VIJEFS, by filing a form meant for that purpose. The request for waiver of fees shall be supported with an affidavit.

Rule 9. Format and Content of Documents.

(a) To the extent practicable, the user shall format all electronically filed documents in accordance with court rules governing formatting of paper documents, including type size, and word and page limits.

(b) Users shall provide information required to file the document in the court case management system.

(c) The Judicial Branch shall publish a Technical Operations Guide describing the specific technical requirements regarding the format and content of documents filed in the electronic filing system. The size of a single document submitted to the VIJEFS system cannot exceed 25 megabytes, but a Filing User may submit multiple parts of a single oversized document separately as part of a single filing.

(d) *Hyperlinks Permitted.*

(1) Hyperlinks and other electronic navigational aids may be included in an electronically filed document as an aid to the court. Each hyperlink or other electronic navigational aid must contain a text reference to the target of the link.

(2) Material linked by a hyperlink or other electronic navigational aid is not considered part of the document being filed.

(3) Hyperlinks to cited authority may not replace standard citation format for constitutional citations, statutes, cases, rules, or other similarly cited materials.

(4) A party may not use hyperlinks or other electronic navigational aids to circumvent the word or page limitations of any court rule.

Rule 10. Official Record.

(a) Electronically filed documents have the same force and effect as documents filed by conventional methods.

(b) For documents that have been electronically filed, the electronic version constitutes the official record. No paper copy of an electronically filed document shall be sent to the court, except as provided in Rules 7 or 13 or unless the court specifically requires a copy through court rule or order.

(c) The clerk of court may maintain the official court record in electronic format or in a combination of electronic and non-electronic formats. Documents filed by conventional methods in an electronic case file shall be electronically scanned and made part of the official record. The clerk of court may discard the paper copy immediately, unless required to maintain the paper copy by court rule, statute, or other applicable law. If a document submitted by conventional methods

is not of sufficient quality to be legible when electronically scanned into the VIJECMS, the clerk shall maintain the document in paper format.

(d) Any official court record containing electronically filed documents shall meet the operational standards for electronic records. The fact that a case is electronically filed has no effect on the scope of what is accessible to the public. Access to information in the court file will depend on the nature of the information and the level of authorization of those seeking to access the file.

(e) The clerk of court shall make the public portions of the electronic record available through the Internet or public access terminals in the clerk's office.

(f) Certified copies of an electronic record shall be obtainable from the clerk of court's office by conventional methods unless or until the VIJEFS is equipped for processing and delivering original sealed certified documents.

(g) In an electronic case file, the court may require the submitting party to produce the original paper document if validity of the signature or document is challenged.

(h) Electronic placement of the clerk's filing stamp and case number constitutes the official court record. A conformed copy may be printed from the VIJECMS by the clerk of court or from the VIJEFS by a user who is authorized to access the case.

Rule 11. Signing Pleadings, Motions, and Other Papers.

(a) Signature on Electronic Filings:

1. A registered user's log-in and password serve as the user's signature on all documents electronically filed with the Court. They also serve as a signature for purposes of Rule 11 of the Virgin Islands Rules of Civil Procedure, any other applicable court rules, and any other purpose for which a signature is required in connection with proceedings before a court.

2. Except as provided by Rule 11(b), where a hand signature would otherwise appear, each document filed electronically by a registered user may be signed in the format "/s/ Chris E. Attorney."

3. Only a judge, registered user, clerk of court, court reporter, or deputy clerk of court may use the "/s/" signature form, and, except as provided by Rule 11(b)(1)(a) only when signing the document as the filer.

(b) Jointly Filed Documents; Multiple Signatures:

1. Documents requiring signatures of more than one party may be filed in one of the following ways:

(A) Where all signers are registered users and where all consent to the filing, by using the “/s/” electronic signature as to all parties;

(B) Where all signers use hand signatures, by scanning the document and filing it electronically without the “/s/” signature by any party;

(C) By scanning one or more identical documents with hand signatures and attaching each document as an exhibit to a document bearing the registered user’s “/s/” electronic signature; or

(D) By using any other method prescribed by the court.

2. In no event may one signature page be signed in the “/s/” electronic form by one party and by hand signature by another party.

Rule 12. Confidential Information.

(a) The confidentiality of an electronic record, or an electronic or paper copy thereof, is the same as for the equivalent paper record. The electronic filing system may permit access to confidential information only to the extent provided by law. No person in possession of a confidential electronic record, or an electronic or paper copy thereof, may release the information to any other person except as provided by law.

(b) If a document is deemed confidential by statute, court rules or court order, it shall be identified as confidential by the submitting party when it is filed. The electronic filing system may require users to enter certain information, such as social security numbers, in confidential fields. The clerk of court is not required to review documents to determine if confidential information is contained within them.

(c) It is the responsibility of the filer to ensure that confidential information is omitted or redacted from documents in accordance with Virgin Islands law, including but not limited to Virgin Islands Rules of Civil Procedure 5.2 and Virgin Islands Rules of Appellate Procedure 15(c) and 24(a), before the documents are filed. If such confidential information is material to the case, and the case is not itself confidential or sealed, the filer shall conventionally file the unredacted document with the court along with a motion to seal the document, which shall be automatically temporarily sealed until and unless the motion is denied by the court. If the court grants the motion, the parties shall also file conventionally under seal, without further order of the court, all documents referring to or disclosing the confidential information in the sealed document.

(d) If a party knowingly files documents containing unredacted confidential information, the court, upon its own motion or upon the motion of any party, may

impose sanctions, which may include an order requiring a violator to pay a party all damages and reasonable expenses, costs, and attorney fees incurred because a party knowingly filed documents containing unredacted protected information.

Rule 13. Special Rules for Electronically Filing Documents in Certain Cases

(a) Appeals and Original Proceedings in the Supreme Court:

1. Notices of appeal, petitions for extraordinary writs, and other initiating documents shall be filed with the clerk of the Supreme Court through the VIJEFS. The Clerk of the Superior Court shall electronically file the originating court record or provide a hyperlink to the court record with a certification that the electronic court record is accurate and complete.

2. Court reporters shall file transcripts with the Clerk of the Superior Court, who shall transmit them as part of the record in accordance with Rule 13(a)(1) of these Rules and Rule 11 of the Virgin Islands Rules of Appellate Procedure.

3. When filing Motions, Petitions for Original Proceedings, and Petitions for Extraordinary Writs, parties shall electronically file the original only. The Clerk of the Supreme Court may direct a party to submit additional paper copies of the motion, petition, response, or any appendices or exhibits, when paper copies would aid the Court's review of the matter.

4. When filing briefs, electronically file the original. For the electronically filed brief, the color requirements for the cover under the Virgin Islands Rules of Appellate Procedure shall not apply. The seven paper copies of appellate briefs must comply with the format and content rules of the Virgin Islands Rules of Appellate Procedure. Paper copies must be submitted within seven days or within such specific time as directed by the Court. For the paper copies, the color requirements for the cover under the Virgin Islands Rules of Appellate Procedure shall apply.

5. When filing an Appendix, electronically file the original. The Appendix shall include a table of contents and otherwise comply with the format and content rules of the Virgin Islands Rules of Appellate Procedure. The Court encourages the electronic bookmarking of each document to its corresponding reference in the table of contents to make the appendix readily searchable. Four paper copies of the appendix shall be conventionally filed with the briefs.

(b) Appeals Within the Superior Court:

Appeals from the Magistrate Division of the Superior Court to the Appellate Division of the Superior Court shall be electronically filed as a new initiating document with the clerk of the Superior Court. Except for electronic recordings, the record on appeal may be filed electronically with a certification that the electronic court record is accurate and complete. If no written transcript

exists for the court's proceedings that have been recorded electronically, the electronic recording shall be filed by conventional methods.

(c) *Filings by Non-Parties in Confidential or Sealed Cases.* A person or entity who wishes to participate in a confidential or sealed case, including but not limited to as an intervenor or an *amicus curiae*, shall file with the court and serve on the parties an appropriate motion through conventional methods. Until the court grants the motion, the person or entity is not allowed to download or view any part of the confidential file, nor will receive notice through the VIJEFS of any document filed in the case. If the court grants a motion to intervene, the intervenor will be treated in the same manner as a party with respect to the ability to view and file documents through the VIJEFS. However, a person or entity only granted permission to appear as an *amicus curiae* or other non-intervenor will not be allowed to view and file documents through the VIJEFS unless expressly granted such permission by the court.

Rule 14. Electronic Filing System Technical Failures

(a) A user whose filing is made untimely as a result of a technical failure may seek appropriate relief from the court as follows:

1. If the failure was caused by the court's electronic filing system, the court shall grant appropriate relief upon satisfactory proof of the cause.

2. If the failure was not caused by the court's electronic filing system, the court may grant appropriate relief upon satisfactory proof of the cause. Parties are responsible for timely filing of electronic documents to the same extent as with the filing of paper documents, with the same consequences for missed deadlines. The calculation of time under other statutes and rules is neither expanded nor contracted by this section.

(b) This subsection shall be liberally applied to avoid prejudice to any person using the electronic filing system in good faith.