



1 of 3 DOCUMENTS

VIRGIN ISLANDS COURT RULES ANNOTATED

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\*\*\* Rules current through January 3, 2011.\*\*\*

\*\*\* Annotations current through November 17, 2010.\*\*\*

LOCAL RULES OF CIVIL PROCEDURE OF THE DISTRICT COURT OF THE VIRGIN ISLANDS

II. Commencement of Action; Service of Process, Pleadings, Motions, and Orders

*D. V.I. Loc. R. Civ. P. Rule 3.2 (2011)*

**Rule 3.2. Mediation**

(a) "Mediation" means a process whereby a neutral third person called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties. It is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. In mediation, decision making authority rests with the parties. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem-solving and exploring settlement alternatives.

**(b) (1) Certification of Mediators.**

(A) The Court shall certify as many mediators as it determines to be necessary.

(B) Each individual certified as a mediator shall take the oath or affirmation prescribed by Title 28 U.S.C. Section 453 before serving as a mediator.

(C) A list of all persons certified as mediators shall be maintained with the Court.

(D) For certification, a mediator must:

(i) Complete a minimum of twenty (20) hours in a training program approved by the Court; and,

(ii) Observe a minimum of four district or other mediation conferences conducted by a certified mediator and conduct four District Court mediation conferences under the supervision and observation of a Court-certified mediator;

(iii) Meet one of the following requirements:

(a) Be a member in good standing of the Virgin Islands Bar with at least five years of Virgin Islands practice and an active member of the Virgin Islands Bar within one year of application for certification; or,

(b) If approved by the Chief Judge, upon written request setting forth reasonable and sufficient grounds, be a retired judge who was a member of the bar in the state or Territory in which the judge presided. The judge must have

been a member in good standing of the bar of another state for at least five years immediately preceding the year certification is sought but need not meet the requirements of subsection (b)(1)(D)(ii); or,

(c) Hold a master's degree and be a member in good standing in his or her professional field with at least five (5) years of practice in the Virgin Islands.

(2) Notwithstanding the foregoing requirements for certification, the Court may, in the absence of available certified mediators, appoint as a mediator a qualified person acceptable to the Court and the parties.

(3) A person certified as a mediator by the American Arbitration Association or any other national organization approved by the Court shall be deemed to qualify under this section as a Court Mediator.

**(c) (1) Referral by Court.**

Except as hereinafter provided, the Court may hereafter order any contested civil matter or selected issue to be referred to mediation.

**(A) Conference or Hearing Date.**

The first mediation conference shall be held within the deadline ordered by the Court.

**(B) Role of Counsel.**

Unless otherwise ordered by the Court, counsel to the parties shall attend and participate in mediation conferences.

(C) Mediation conferences shall take place on a date, and at a time and location, agreed to by the parties and the mediator unless otherwise ordered by the Court.

**(2) Motion to Dispense with Mediation.**

A party may move to dispense with mediation if:

(A) The issue to be considered has been previously mediated between the same parties;

(B) The issue presents a question of law only;

(C) Other good cause is shown.

**(d) (1) Duties of Mediators.**

Mediators have a duty to define and describe the process of mediation and its costs at the first mediation conference. The subjects covered should include the following:

(A) Mediation procedures;

(B) The differences between mediation and other forms of conflict resolution;

(C) The circumstances under which the mediator may meet alone with either of the parties or with any other person;

(D) The confidentiality provided for by *Title 5, Section 854 of the Virgin Islands Code*;

(E) The duties and responsibilities of the mediator and the parties;

(F) The fact that any agreement reached must be reached by mutual consent of the parties;

(G) The information necessary to define the disputed issues.

(2) Mediators have a duty to disclose any fact that would be grounds for disqualification. Mediators have a duty to be impartial and to advise all parties of any circumstances suggesting possible bias, prejudice or lack of impartiality. Persons selected as a mediator shall be disqualified for bias, prejudice or partiality, as provided by Title 28 U.S.C. Section 144, and shall disqualify themselves in any action in which they would be required under Title 28 U.S.C. Section 455 to disqualify themselves if they were a Judge or Magistrate Judge. Any party may move the Court to enter an order disqualifying a mediator for good cause.

(3) Mediators appointed by the Court pursuant to these Rules shall have judicial immunity in the same manner and to the same extent as a judge.

**(e) (1) Completion of Mediation.**

Mediation shall be completed within ninety (90) days of the first mediation conference unless extended by order of the Court.

**(2) Exclusions from Mediation.**

The following actions shall not be referred to mediation:

- (A) Criminal actions;
- (B) Forfeitures of seized property;
- (C) Habeas corpus and extraordinary writ; or
- (D) Any litigation expedited by statute or rule.

**(3) Discovery.**

Discovery may continue throughout mediation. Such discovery may be delayed or deferred upon agreement of the parties or by order of the Court.

**(4) Disclosure Privilege.**

Each party involved in a Court-ordered mediation conference has a privilege to refuse to disclose, and to prevent any person present at the proceeding from disclosing, communications made during such proceeding.

**(5) Inadmissibility of Mediation Proceedings.**

All communications, written or oral, made in the course of a mediation proceeding, other than an executed settlement agreement, shall be inadmissible as evidence in any subsequent legal proceeding, unless all parties agree otherwise.

**(f) (1) Interim or Emergency Relief.**

Mediators may apply to the Court for interim or emergency relief at any time, at the initiation of the mediator after consultation with the parties, or at the parties' request. Mediation shall continue while such a motion is pending absent a contrary order of the Court or a decision of the mediator to adjourn pending disposition of the motion. Time for completing mediation shall be tolled during any periods where mediation is interrupted pending resolution of such a motion.

**(2) Sanctions for Failure to Appear.**

If a party, without good cause, fails to appear at a duly noticed mediation conference or fails to participate in the mediation in good faith, the Court shall impose sanctions, including an award of mediator and attorney fees and other costs. If, in the opinion of the mediator, a party has not participated in the mediation in good faith, and notwithstanding any other provisions of this Rule, the mediator shall notify the referring judge in writing who shall conduct such further proceedings as appropriate to resolve the issue. If a party to mediation is a public entity, that party shall be deemed to appear at a mediation conference by the physical presence of a representative with full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision-making body of the entity. Otherwise, unless stipulated by the parties, a party is deemed to appear at a mediation conference if the following persons are physically present:

(A) The party or its representative having full authority to settle without further consultation; and,

(B) A representative of the insurance carrier for any insured party who is not such carrier's outside counsel and who has full authority to settle without further consultation.

**(3) Communication with Parties.**

The mediator may meet and consult with the parties or their counsel, individually or collectively, on any issue pertaining to the subject matter of the mediation. Should the mediator wish to discuss a matter with parties, the mediator must inform all parties to the mediation.

**(4) Appointment of the Mediator.**

(A) Within ten (10) days of the order of referral, the parties may agree upon a stipulation with the Court designating:

(i) A certified mediator; or

(ii) A mediator who does not meet the certification requirements of these Rules but who, in the opinion of the parties and upon review by the Court, is otherwise qualified by training or experience to mediate all or some of the issues in the particular case.

(B) If the parties cannot agree upon a mediator within ten (10) days of the order of referral, the plaintiff or petitioner shall so notify the Court. The Court shall appoint a certified mediator selected by rotation or by such other procedures as may be adopted by administrative order of the Court.

**(5) Compensation of the Mediator.**

The mediator shall be compensated by the parties. The Court may determine the reasonableness of the fees charged by the mediator. In the absence of a written agreement providing for the mediator's compensation, the mediator shall be compensated at the hourly rate set by the Court in the referral order. Each party shall pay one-half or such other proportionate share of the total charges of the mediator as may be agreed upon, unless the mediator and/or the Court determines that one party has not mediated in good faith.

**(g) (1) No Agreement.**

If the parties do not reach any agreement as to any matter as a result of mediation, or if the mediator determines that no settlement is likely to result from the mediation, the mediator shall report the lack of an agreement to the Court without comment or recommendation. With the consent of the parties, the mediator's report may also identify any pending motions or outstanding legal issues, discovery process, or other action by any party which, if resolved or completed, would facilitate the possibility of a settlement.

**(2) Agreement.**

If an agreement is reached, it shall be reduced to writing and signed by the parties and their counsel, if any. The agreement shall be filed when required by law or with the parties' consent. If the agreement is not filed, a joint stipulation of dismissal shall be filed. By stipulation of the parties, the agreement may be electronically or stenographically recorded, and any transcript may be filed with the Court.

**(3) Imposition of Sanctions.**

In the event of any breach of or failure to perform under the agreement, the Court upon motion may impose sanctions, including costs, attorney fees, or other appropriate remedies including entry of judgment on the agreement.

**NOTES:****CASE NOTES**

## Disqualification

**Disqualification**

An attorney who was formerly the mediator in the identical litigation must be disqualified from later representing a party to that litigation, as it is not unreasonable to assume that, in light of the nature and purpose of mediation proceedings, confidential information is disclosed by the parties. Further, disqualification should be imputed to the others members of the mediator/attorney's firm. *McKenzie Constr. v. St. Croix Storage Corp.*, 37 V.I. 105, 961 F. Supp. 857, 1997 U.S. Dist. LEXIS 5519 (1997).