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VIRGIN ISLANDS COURT RULES ANNOTATED  
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\*\*\* Rules current through January 3, 2011.\*\*\*  
\*\*\* Annotations current through November 17, 2010.\*\*\*

RULES GOVERNING THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
PART II. PROCEDURE IN THE CIVIL DIVISION  
V. Proceedings Before Trial

*V.I. Super. Ct. Rule 40 (2011)*

**Rule 40. Civil 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 non-adversarial 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) Referral.**

Except as hereinafter provided, a Judge may order any matter not excluded by subsection (d)(2) herein to be referred to mediation, provided the mediator has been certified by the Presiding Judge. The parties to any contested civil matter may file a written stipulation to mediate any issue between them at any time. Such stipulation shall be incorporated into the order of referral.

(A) Conference or Hearing Date. Unless otherwise ordered by the Court, the first mediation conference shall be held within sixty (60) days of the order of referral.

(B) Role of Counsel. Unless otherwise ordered by the Court, counsel to the parties shall attend and participate in the mediation conference. The role of counsel shall be limited to general consultation pursuant to the rules governing the attorney-client privilege.

(C) Notice. Within ten (10) days after the order of referral, the Court or its designee, who may be the mediator, shall notify the parties in writing of the date, time, and place of the conference.

(D) A mediator is authorized to change the date and time for the mediation conference, provided the conference takes place within fifteen (15) days of the date set forth in (1)(A). Any continuance of the conference beyond this fifteen day period must be approved by the Judge to whom the case is assigned.

(E) The mediation conference shall take place at a site designated by the Court or any other place stipulated to by

the parties.

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

A party may move, within 15 days after the order of referral, 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.

**(3) Certification and Qualification of Mediators.**

(A) Certified Mediators. The Presiding Judge may certify as a mediator any person who:

- (i) is at least twenty-one (21) years of age;
- (ii) is a citizen of the United States of America or a legal immigrant;
- (iii) has completed a minimum of twenty (20) hours in a training program approved by the Superior Court; or
- (iv) has been a person certified as a Mediator by the American Arbitration Association, or any other national organization approved by the Superior Court, and
  - (v) is a member in good standing of the Virgin Islands Bar with at least 5 years of V.I. practice, and an active member of the V.I. Bar within one (1) year of application for certification; or
  - (vi) is the holder of a Master's degree in Social Work, Psychology or related field of Conflict Resolution and a member in good standing in his or her professional field with at least 5 years of practice in the V.I.
- (vii) Notwithstanding the foregoing procedures, the Presiding Judge may certify as a Superior Court Mediator any former Judge of a Federal, State or Superior Court. Such former Judge must not have been subjected to any disciplinary action at the time of his/her appointment as a Mediator.

**(B) Qualified Mediators.**

The presiding Judge may designate as a qualified mediator any person who:

- (i) is at least twenty-one (21) years of age;
- (ii) is a graduate of an accredited high school or holder of a high school equivalency diploma;
- (iii) is a citizen of the United States of America or a legal immigrant;
- (iv) has at least eight (8) years of specific and active experience in his/her field of endeavor;
- (v) is of good moral character as shown by at least two (2) character references who are not related by blood or marriage;
- (vi) is not an abuser of alcoholic stimulants, narcotic drugs, or any controlled substances;
- (vii) is not suffering from any mental or emotional impairment and does not have a history thereof.
- (viii) Any person who meets the foregoing requirements may be eligible to serve as a Qualified Mediator of the

Superior Court. A Qualified Mediator may become a Certified Mediator upon compliance with the requirement for certification.

(C) Each Mediator shall, before serving as a Mediator, take an oath or affirmation similar to that administered to officials of the Superior Court.

(D) A list of all persons certified as Mediators shall be maintained by the Court.

**(c) (1) Duties of Mediator.**

The mediator has a duty to define and describe the process of mediation and its costs during an orientation session with the parties before the mediation conference begins. The orientation should include the following:

(A) Mediation procedures;

(B) The differences between mediation and other forms of conflict resolution, including therapy and counseling;

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

(D) The confidentiality provision as 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 for defining the disputed issues.

(2) The mediator has a duty to be impartial, and to advise all parties of circumstances bearing on his/her possible bias, prejudice or lack of impartiality. Any person selected as a mediator may be disqualified for bias, prejudice or impartiality as provided for by *Title 4 V.I.C. Section 284* and shall disqualify himself in any action in which he would be required under *Title 4 V.I.C. Section 284* to disqualify himself if he were a Judge.

**(3) Disqualification of a Mediator.**

Any party may move the Court to enter an order disqualifying a mediator for good cause. Mediators have a duty to disclose any fact bearing on their qualifications which would be grounds for disqualification. If the court rules that a mediator is disqualified from hearing a case, an order shall be entered setting forth the name of a qualified replacement. Nothing in this provision shall preclude mediators from disqualifying themselves or refusing any assignment. The time of mediation shall be tolled during any period in which a motion to disqualify is pending.

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

Mediation shall be completed within forty-five (45) days of the first mediation conference unless extended by order of the Court or by stipulation of the parties, but in any event the process shall not exceed ninety (90) calendar days.

**(2) Exclusions from Mediation.**

The following actions shall not be referred to mediation:

(A) Criminal actions;

(B) Appeals from rulings of administrative agencies;

- (C) Forfeitures of seized property;
- (D) Habeas corpus and extraordinary writs;
- (E) Declaratory relief;
- (F) Any case assigned by the Court to a multidistrict tribunal; or
- (G) Other matters as may be specified by order of a Judge in the territory.

**(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 not to disclose, and to prevent any person present at the proceeding from disclosing communications made during such proceeding.

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

Any or 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.

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

A mediator may apply to the court for interim or emergency relief at any time, at the initiation of the mediator upon 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 period 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 against the party failing to appear or found not to have mediated in good faith. 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 make 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) Adjournments.**

The mediator may adjourn the mediation conference at any time and may set a date and time for reconvening the adjourned conference, providing the mediation conference takes place within 15 days of the original date set for the conference. Any continuance beyond this 15-day period must be approved by the Judge to whom the case is assigned. No further notification is required for parties present at the adjourned conference.

**(4) Role of Counsel.**

Mediation will proceed in the presence of counsel, unless otherwise ordered by the Court. Counsel shall only be permitted to communicate privately with their clients when the parties are not attending scheduled mediation proceedings.

**(5) Communication with Parties.**

The mediator may meet and consult with the parties and their counsel on any issue pertaining to the subject matter of the mediation. Should the mediator wish to discuss a matter with the parties or their counsel, the mediator must inform all parties to the mediation of the location and subject matter of such meeting. The mediator can consult with any party or their counsel only upon agreement of all parties. The mediator shall keep a written record of any and all meetings conducted with the parties or their counsel and such record shall be made available to the parties, it being understood that this record shall not relate to the ex parte communications with the mediator.

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

**(A)** Within 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 the rules but who, in the opinion of the parties and upon review by the Presiding Judge, 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 days of the order of referral, the plaintiff or petitioner shall so notify the Court within 10 days of the expiration of the period to agree on a mediator, and the Court shall appoint a Mediator selected by rotation or by such other procedures as may be adopted by administrative order of the Court.

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

The Mediator shall be compensated by the parties. The Presiding Judge 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 Presiding Judge. 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 in which event the total fees may be assessed against the defaulting party by the Court. Mediators are expected to render pro bono service by charging reduced fees or no fees to an indigent party, where such indigency is established by affidavit filed in the Court.

**(f) (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 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 by the parties' consent. If the agreement is not filed, a joint stipulation of dismissal or consent judgment shall be filed. By stipulation of the parties, the agreement may be electronically or stenographically recorded. In such event, the transcript may be filed with the Court.

**(3) Imposition of Sanctions.**

In the event of any breach 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.

**HISTORY:** --Adopted Oct. 14, 1994, eff. Nov. 16, 1994; amended Oct. 12, 1995; Aug. 9, 2007.

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

## Jurisdiction

**Jurisdiction**

As a trial court dismissed a case without complying with the filing requirements of V.I. Super. Ct. 40(f)(2), it did not preserve the court's jurisdiction to invoke the sanction power of Rule 40(f)(3). *Judi's of St. Croix Car Rental v. Weston*, 49 V.I. 396, 2008 V.I. Supreme LEXIS 12 (Feb. 21, 2008).

**Cited**

Cited in *Govia v. Burnett*, 45 V.I. 235, 2003 V.I. LEXIS 7 (Terr. Ct. St. T. and St. J. May 5, 2003).