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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.***

Virgin Islands Supreme Court Rules

V.I.S. Ct. R. Rule 7 (2011)

Rule 7. Appellate Mediation and Conciliation.

(a) How Initiated.

Civil appeals to the Supreme Court may be referred to a mediator to meet with counsel and parties to facilitate settlement of the case, simplify issues, or otherwise assist in the expeditious handling of an appeal.

(b) Attendance at Sessions.

Mediation sessions must be attended by each party, or another person with actual authority to settle the case, and their counsel. Failure of counsel to attend sessions may result in the imposition of sanctions, including dismissal of the appeal. Counsel is not required for parties appearing *pro se*.

(c) Clerk as Administrator; Case Selection.

The Clerk of the Supreme Court shall serve as the program administrator of the Appellate Mediation Program. A party may request mediation, but the Chief Justice will determine which cases are appropriate for mediation. Case selection will usually take place approximately thirty days after a case has been docketed for appeal. Counsel of record will receive notice of case selection and of the mediator assigned. An initial mediation session will be scheduled by the mediator within thirty days of a case's selection for mediation, with additional sessions to be scheduled as needed.

(d) Submission and Service of Papers.

The Clerk will provide the mediator with a copy of the judgment, opinion, and/or order on appeal, the appeal information statement, the appellant's statement of issues on appeal, and all relevant motions. Upon request of the mediator, counsel shall prepare and submit to the mediator a position paper of no more than ten pages (double spaced), stating their parties' views on the key facts and legal issues in the case. The position paper will include a statement of motions filed and their status. All motions filed or decided while mediation is underway are to be identified for the mediator and submitted to her or him upon request. Copies of documents submitted to the mediator should be served upon opposing counsel unless the mediator excuses such service. Documents prepared for mediation sessions are not to be filed with the Clerk except as noted below.

(e) Argument Schedule; Motion to Postpone.

All cases in mediation remain subject to normal scheduling for briefing and oral argument. If it is the mediator's view that additional mediation sessions are required and that such sessions would affect the briefing schedule in the case, counsel shall request an extension by filing a joint motion to defer or postpone the briefing, oral argument, and/or consideration date(s). Counsel shall represent that the mediator concurs in the request.

(f) Privileged Discussions.

The content of mediation discussions and proceedings, including any statement made or document prepared by any party, attorney, or other participant, is privileged and shall not be disclosed to the Supreme Court or construed for any purpose as an admission against interest. To that end, the parties shall not file any motions or other document that would disclose any information about the content of a mediation, whether or not it has been concluded. This means that parties are prohibited from using any information obtained as a result of the mediation process as a basis for any motion other than a motion affecting the briefing or argument schedule.

(g) Mediation Not Binding.

No party shall be bound by anything said or done at a mediation session unless a settlement is reached. If a settlement is reached, the agreement shall be reduced to writing and shall be binding upon all parties to the agreement.

(h) Costs.

Mediators 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 order referring the matter to mediation. Each party shall pay one-half or such other proportionate share of the total charges of the mediators as may be agreed upon, unless the mediator and/or the Court determines that one party has not mediated in good faith.

(i) Selection of Mediator.

Mediators for the Supreme Court will be selected by the Court from those qualified under either the Supreme Court of the Virgin Islands Rules of Civil Procedure as adopted, and/or Superior Court Rule 40(a)(3).

(j) Settlement.

If a case is settled, the mediator or counsel shall file a stipulation of dismissal. Such stipulation must be filed within fifteen days after the settlement is reached unless a short extension is requested by counsel by motion. If a case cannot be resolved through mediation, the parties shall so inform the Court within ten days after the last mediation session, and the matter will remain on the docket and proceed as if mediation had not been initiated.

HISTORY: --Amended Dec. 10, 2009, eff. Jan. 1, 2010.