

Superior Court of the Virgin Islands

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Chambers of
Michael C. Dunston
Presiding Judge

(340) 693-6412

Post Office Box 70
Charlotte Amalie
St. Thomas
U.S. Virgin Islands 00804

February 2, 2016

Via Electronic Mail

J. Russell B. Pate, Esq.
President of the Virgin Islands Bar Association
The Pate Law Firm
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Post Office Box 890
St. Thomas, U.S.V.I. 00804
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RE: Proposed new Super. Ct. R. 20

Dear Mr. Pate:

Enclosed is a copy of the proposed new Super. Ct. R. 20, which includes Forms A, B1, B2, and C. Because we are asking members of the Bar who are interested in volunteering for a panel to apply by February 15, 2016, I ask that you please circulate a copy of the new Rule to all active members of the Virgin Islands Bar Association as soon as possible.

Thank you in advance for your cooperation and assistance with this matter.

Sincerely,

The Honorable Michael C. Dunston
Presiding Judge of the Superior Court of the Virgin Islands

Attachment: Proposed new Super. Ct. R. 20.

PROPOSED NEW RULE 20

OF THE RULES OF THE SUPERIOR COURT

Preface:

Seeking to assure effective representation of indigent criminal defendants and other unrepresented parties in a manner that is equitable and just, the Superior Court implements a system for appointing attorneys in Superior Court proceedings. Having reviewed the procedures of other courts that have successfully implemented a panel approach, particularly the Superior Court of Guam, and the directives of the Supreme Court of the Virgin Islands in *In re Holcombe*, 2015 V.I. Supreme LEXIS 39 (V.I. 2015), the Court adopts the following rule that establishes a voluntary panel of attorneys. The Court will review the effectiveness of this system periodically to determine whether adjustment is appropriate.

NOW THEREFORE, the Rules of the Superior Court are amended by adding thereto a new Rule 20 as follows:

Rule 20. APPOINTMENT OF COUNSEL.

A. REPRESENTATION.

- (a) The Court shall appoint counsel to a party who is financially unable to obtain adequate representation without substantial hardship in all situations in which a constitutional, statutory, or other right to counsel exists, including when a person is:
- (1) charged with a misdemeanor for which a penalty of imprisonment may be imposed;
 - (2) arrested for or charged with a felony;
 - (3) entitled to appointment of counsel under Virgin Islands Code Annot., tit. 5, § 2505, or in other matters within the jurisdiction of the Family Division of the Superior Court;
 - (4) entitled to appointment of counsel under the Sixth Amendment to the United States Constitution or facing loss of liberty and Virgin Islands law, the United States Constitution, or the applicable provisions of the Organic Act require the appointment of counsel.
- (b) Notwithstanding this or any other court rule, the Court may, at its sole discretion, appoint an attorney to represent any person unable to employ counsel as provided in Virgin Islands Code Annot., tit. 4, § 513(d), as otherwise provided by law, or as justice so requires.

B. DETERMINATION OF NEED.

- (a) Any party who cannot retain private counsel without substantial hardship to that party, or to his or her dependents, will be deemed “indigent” and eligible to receive the assistance of assigned counsel as provided in this Rule. The Court or its designee shall determine whether the party is indigent utilizing the standards set forth in this Rule.
- (b) **Definitions.**
- (1) *Available Funds* – Available funds are calculated by determining the sum of a party’s liquid assets and disposable net monthly income after provision is made for the party’s bail obligations, taking into account the following:
 - (i) *Certain Assets and Income of Party’s Household.* A party’s available funds shall also include the liquid assets and disposable net monthly income of the party’s spouse (or person in substantially the same relationship) and each of the party’s parents, provided, in each instance, the person lives in the same

residence as the party and contributes substantially toward the household's basic living expenses, unless that other person has an adverse interest in the proceeding (*e.g.*, is the victim, complainant, or petitioning party, is a prospective prosecution witness, or is a party, if the proceeding is a civil matter).

- (ii) *Available Funds of a Party over Sixteen Supported by Another.* The available funds of any party over the age of sixteen who is substantially supported by a parent or parents or by a guardian, or who continues to be claimed as a dependent for tax purposes, shall include the available funds of that person's parent or parents or guardian, except when that other person has an adverse interest in the proceeding.
 - (iii) *Available Funds of a Party under Seventeen.* The available funds of a party under the age of seventeen (including a child allegedly in need of services and an allegedly delinquent child, as defined in Virgin Islands Code Annot., tit. 5, § 2505, shall include available funds of the child's parents or guardian, regardless of their place of residence, except when that other person has an adverse interest in the proceeding.
- (2) *Basic Living Costs* -- The average monthly amount spent for reasonable payments, including loan payments, toward living costs such as shelter, food, utilities, health care, transportation, clothing, education, and support payments.
 - (3) *Disposable Net Monthly Income* -- The income remaining each month after deducting income taxes, social security taxes, contributory retirement, union dues, and basic living costs.
 - (4) *Income* -- Salary, wages, interest, dividends, rental income, and other earnings and cash payments such as amounts received from pensions, annuities, social security, and public assistance programs.
 - (5) *Liquid Assets* -- Cash, savings accounts, bank accounts, stocks, bonds, certificates of deposit, equity in real estate, and equity in a motor vehicle or in other tangible property; provided that any equity in real or personal property is reasonably convertible to cash. Any real estate owned by the accused shall be considered in terms of the amounts which could be raised by a loan on the property, provided that the party retains adequate equity and assets to survive without substantial hardship. Any motor vehicle necessary to maintain employment shall not be considered a liquid asset.
- (c) **Affidavit of Financial Status.** Any party seeking counsel under these Rules shall submit an Affidavit of Financial Status (see Form A below) to the Court. As provided in Virgin Islands Code Annot., tit. 5, § 3527, the Affidavit of Financial Status shall contain a full disclosure of all assets, liabilities, current income, dependents and such other information as the court may require in order to determine whether the person should be provided legal assistance at public expense. All statements by the party in this inquiry shall be under penalty of perjury. Whenever a party is appointed counsel under this Rule, the Affidavit of Financial Status shall be filed in the case file and shall be retained as a part thereof.
- (d) **Determination of Need.** Before the appointment of counsel under this Rule for reason of indigence, the Court shall review the Affidavit of Financial Status and determine whether the party is indigent and therefore financially unable to obtain adequate representation without substantial hardship. The Court may appoint counsel subject to the submission of the Affidavit of Financial Status but may nullify the appointment if an Affidavit of Financial Status is not submitted.

(e) Presumption of Indigency.

- (1) A party is presumed indigent, and therefore presumptively eligible for the appointment of counsel, if he or she is:
 - (i) receiving one of the following types of public assistance: Aid to Families with Dependent Children (AFDC), Emergency Aid to Elderly, Disabled and Children (EAEDC), poverty related veterans' benefits, food stamps, refugee resettlement benefits, Medicaid, or Supplemental Security Income (SSI);
 - (ii) receiving an annual income, after taxes, that is equal to or below 120 percent of the current federal poverty income guidelines (for all states except Alaska and Hawaii) prescribed for the size of the household of the party by the federal Department of Health and Human Services in the Federal Register under the authority of 42 U.S.C. § 9902(2);
 - (iii) residing in a public or private mental health care facility, provided, however, that where the Court has reason to believe that the party is not indigent, a determination of indigency shall be made in accordance with other applicable provisions of this Rule. Notwithstanding other provisions of this Rule, for purposes of a determination in the circumstance where the party resides in a public or private mental health care facility, "available funds" shall not include the liquid assets or disposable net monthly income of any member of the party's family;
 - (iv) serving a sentence in a correctional institution and has no available funds; or
 - (v) held in custody in jail and has no available funds.
- (2) This presumption shall be rebuttable where the Court finds that a more thorough examination of the financial resources of the party is necessary. In that instance, the Court shall make a determination of indigency in accordance with other applicable provisions of this Rule.

(f) Determining Need When Indigency Is Not Presumed.

- (1) If the party claiming to be indigent is not presumptively eligible under the provisions of this Rule, then a thorough examination of the financial resources of the party shall be made, with the aid of the party's Affidavit of Financial Status, and by considering the following:
 - (i) the anticipated length and complexity of the proceedings and the usual and customary charges of an attorney in the community for rendering services;
 - (ii) the disposable net monthly income of the party;
 - (iii) all liquid assets of the party that are convertible into cash within a reasonable period of time without causing substantial hardship or jeopardizing the ability of the party to maintain home and employment;
 - (iv) any other available funds of the party.
- (2) If the party does not waive his or her right to counsel or retain counsel on his or her own behalf, counsel shall be appointed for the person if his or her available funds are equal to or below 120 percent of the current federal poverty income guidelines (for all states except Alaska and Hawaii) prescribed for the size of the household of the party by the federal Department of Health and Human Services in the Federal Register under the authority of 42 U.S.C. § 9902(2).
- (3) If the available funds of the accused exceed 120 percent of the current federal poverty income guidelines, as described in this Rule, and the party fails to employ counsel and does not waive his or her right to counsel, the Court may, in exceptional circumstances,

and where the ends of justice so require, appoint an attorney to represent the party. However, in making such appointments, the Court shall state in writing its reasons for so doing. The written statement by the Court shall be included in the record of the case.

- (4) Appointment of counsel shall not be denied to the party because he or she has posted bail or bond or is capable of posting bail or bond, nor shall appointment be denied solely because the party's friends or relatives have resources adequate to retain counsel, except in circumstances where said resources are included in the calculation of the party's available funds as provided in this Rule.

(g) Redetermination.

- (1) If, at any stage of the proceedings, the Court determines under this Rule that a party who previously had not had counsel appointed has become financially unable to obtain adequate representation, the Court may then appoint counsel for that party in accordance with this Rule.
- (2) At any time after granting indigent status or appointing counsel, the Court may inquire into the party's financial status to determine whether he or she remains financially unable to employ counsel under this Rule. Should an attorney appointed to represent the party discover, during the course of that representation, that the party is financially able to make payment, in whole or in part, for legal or other services in connection with his or her representation, court-appointed counsel shall, notwithstanding any rule to the contrary, promptly notify the Court of that fact.

C. ESTABLISHMENT OF PANELS.

- (a) **Generally.** The Clerk of the Superior Court, at the direction of the Superior Court and under the supervision of the Presiding Judge, shall prepare and maintain a panel of regularly admitted members of the Virgin Islands Bar Association who are eligible to practice law in the Virgin Islands and who have volunteered to provide representation to indigent parties on a recurring basis. The panels will be organized into the following three categories: (1) Indigent Criminal Defense Panels; (2) Family Division Panels; and (3) Pro Bono Civil Division Panels.
- (b) **Indigent Criminal Defense Panels.** In criminal cases in which the Court finds that the accused is indigent and either (1) the Territorial Public Defender is determined by the Court to have a conflict of interest, or (2) the case involves multiple defendants who the Court determines cannot be represented by the same attorney, the Court shall, to the extent feasible and just, appoint counsel from a list of attorneys designated as the Indigent Criminal Defense Panel. The Indigent Criminal Defense Panel shall have two (2) tiers, and separate panels shall be formed for the Division of St. Croix and for the Division of St. Thomas and St. John within each tier.
 - (i) Tier 1 of the Panel in each Division shall consist of a group of attorneys, ideally not less than fifteen (15) in number, who volunteer to accept representation of indigent criminal defendants who are charged with offenses designated as Track 3 or Track 4 in the Court's differentiated case management system.
 - (ii) Tier 2 of the Panel in each Division shall consist of a group of attorneys, ideally not less than twenty-five (25) in number, who volunteer to accept representation of indigent criminal defendants who are charged with offenses designated as Track 1 or Track 2 in the Court's differentiated case management system.

- (c) **Family Division Panels.** In cases in the Family Division of the Court in which the Court finds that a party is indigent and either (1) the Territorial Public Defender is determined by the Court to have a conflict of interest, or (2) the case involves multiple parties who the Court determines cannot be represented by the same attorney, or (3) the person is entitled to representation pursuant to Virgin Islands Code Annot., tit. 5, § 2505, or in other matters within the jurisdiction of the Family Division, the Court shall, to the extent feasible and just, appoint counsel from a list of attorneys designated as the Family Division Panel. Separate Family Division Panels shall be formed for the Division of St. Croix and for the Division of St. Thomas and St. John, and the panel in each Division shall consist of a group of attorneys, ideally not less than twenty-five (25) in number, who volunteer to accept representation of indigent parties in the Family Division of the Court.
- (d) **Pro Bono Civil Division Panels.** In cases in the Civil Division of the Court in which one or more of the parties is not represented by counsel and the Court determines that (1) an unrepresented party is indigent and requires the appointment of counsel to protect the party's rights, or (2) the case involves complex issues that require the input of trained counsel, or (3) the failure of one or more of the parties to have legal representation interferes with the orderly advancement of the case, or (4) justice so requires, the Court may, to the extent feasible and just, appoint counsel from a list of attorneys designated as the Pro Bono Civil Division Panel. Separate Pro Bono Civil Division Panels shall be formed for the Division of St. Croix and for the Division of St. Thomas and St. John, and the panel in each Division shall consist of all active members of the Virgin Islands Bar who volunteer to accept representation of unrepresented litigants in the Civil Division of the Court and are:
- (i) not employed by the Government of the Virgin Islands or one of its departments, agencies, or semi-autonomous entities; or
 - (ii) not serving in or on the Virgin Islands Bar Association's Office of Disciplinary Counsel, Board of Professional Responsibility, Preliminary Review Committee, Board on the Unauthorized Practice of Law, Committee of Bar Examiners, Commission on Judicial Conduct, or the Virgin Islands Commission on Access to Justice under V.I.S.C.T.R. 301.

D. MANNER OF APPOINTMENT.

- (a) **Priority.** Upon determining that appointment of counsel is necessary, the Court shall ordinarily appoint the Territorial Public Defender to represent the party. If representation by the Territorial Public Defender is not possible or the case does not fall within the purview of the Territorial Public Defender, the Court shall make appointments from the panel of attorneys who have volunteered to represent parties on a recurring basis. If an appointment from the appropriate panel is not possible, or the number of attorneys who have voluntarily applied to join the panel is insufficient to provide adequate representation to parties eligible for court-appointed counsel, the Court shall, as a last resort, make appointment from the list of active members of the Virgin Islands Bar Association who are eligible to practice law in the Virgin Islands and who have not volunteered to serve on a panel.
- (b) **Rotation of appointments.** The Court shall make appointments from each panel, or when necessary, from the list of active members of the Virgin Islands Bar Association, on a rotational basis, in alphabetical order, unless the Court determines that the interests of justice require otherwise. However, the Court may skip an attorney in the rotation and appoint another attorney on the list when the Court determines that: a) there is a conflict of interest; or b) the attorney lacks

sufficient experience in a serious felony matter; or c) the attorney is unavailable to promptly handle the matter; or d) an immediate appointment of counsel is required. To the extent feasible, the Court should, but is not required to, appoint an attorney who resides in the same Judicial Division of the Superior Court as that in which the case originates. These provisions notwithstanding, the Court may select a particular attorney from a panel should it determine that justice so requires and may appoint an attorney in a case that is outside the panel for which the attorney has volunteered when there is an insufficient number of volunteers for a particular panel or when the Court determines that the interests of justice so require.

- (c) The Court shall ordinarily, but is not required to, appoint the same lawyer or law firm for the same party when the party has more than one pending matter.
- (d) More than one attorney may be appointed to any case determined by the Court to require multiple counsel, giving due consideration to the seriousness of the possible penalty, the unique and complex nature of the litigation, and the experience of the attorney initially appointed.

E. DUTIES OF COURT APPOINTED COUNSEL.

- (a) In carrying out representation under the provisions of this Rule, attorneys shall conform their behavior to the standards set forth in the Virgin Islands Rules of Professional Conduct as contained in V.I.S.CT.R. 211 or as later provided by the Supreme Court or the Superior Court.
- (b) Any attorney appointed in a case under these Rules shall immediately determine if a conflict of interest exists preventing representation. Counsel shall advise the judge assigned to the case as soon as reasonably possible concerning any conflict of interest or other circumstance that would interfere with counsel providing adequate and conflict-free representation of a party or that should otherwise be disclosed.

F. ADDING AND REMOVING ATTORNEYS FROM THE PANELS.

- (a) The Presiding Judge may add or remove attorneys from the panel at any time he or she sees fit, based on the qualifications and availability of those attorneys and subject to review and comment by all Judges on the Superior Court.
- (b) Attorneys who have been suspended or disbarred from a court of any state, territory, commonwealth, or possession of the United States and who are the subject to reciprocal discipline pursuant to the Rules of the Supreme Court of the Virgin Islands, or who are presented for discipline in the Supreme Court of the Virgin Islands, shall be suspended from the list of eligible panel attorneys pending disposition of the ethics proceedings. If the attorney is counsel of record in a pending case, the attorney shall notify the Judge overseeing the case and the Clerk of the Superior Court of the initiation or pendency of ethics proceedings as soon as reasonably possible. If the attorney is suspended or disbarred as a result of the proceedings, the attorney shall be removed from the panel(s), and will be eligible to reapply only if he or she later becomes a member of the Virgin Islands Bar Association in good standing.
- (c) Any complaints about the performance or commitment of a panel attorney shall be referred to the Presiding Judge, who shall take whatever action he or she deems necessary, subject to review by all Judges of the Superior Court at the request of the panel attorney.

G. VOLUNTARY RESIGNATION FROM THE PANEL.

- (a) Any panel member who desires to voluntarily resign from the panel shall submit a written request to the Presiding Judge setting forth reasons and justification for his or her resignation. The Presiding Judge shall determine whether the resignation will have a detrimental effect on the ability of the Court to appoint counsel before allowing the member to resign prior to the end of the year.

H. APPEARANCE BY APPOINTED COUNSEL IN SUPERIOR COURT PROCEEDINGS.

- (a) Appointed counsel are expected to appear personally at all proceedings. The Court may, in the interest of justice, substitute one appointed counsel for another at any stage of the proceedings. With the prior written approval of the Court, counsel may liberally associate with, or obtain substitute counsel, under private arrangement, in order to provide representation under this Rule. However, with respect to appointed counsel who is a partner, shareholder, or member of a law firm, an attorney affiliated with the law firm may participate and appear without leave of the Court on behalf of the appointed counsel in any proceeding in this Court, so long as that attorney is adequately prepared to carry out the responsibilities of the appointment. These provisions notwithstanding, appointed counsel shall exercise actual supervisory control and authority over the performance of any appearing attorney and remain ultimately responsible for the effective representation of the party in accordance with the applicable rules of professional conduct. Further, the Court will not permit billing for more than one attorney to perform the same or substantially similar work, nor for conferences between counsel and other attorneys, paralegals, or office staff. The Court may in its discretion require the appointed counsel to personally appear at a particular hearing should the Court deem that the circumstances of the case require appointed counsel's appearance.

I. DURATION OF APPOINTMENT.

- (a) Unless excused by order of the Court, counsel appointed under this Rule shall continue to act for the party throughout the proceedings in this Court and, when an appeal is taken, shall continue to represent that party on appeal in the Supreme Court of the Virgin Islands in accordance V.I.S.CT.R. 210.3.
- (b) After the conclusion of the proceedings in the Superior Court, counsel appointed under this Rule shall timely advise the party, when applicable, of the right to appeal and the right to counsel on appeal. If the party desires to appeal, irrespective of whether appointed counsel intends to seek permission to withdraw from the case, appointed counsel shall file a timely Notice of Appeal in the Supreme Court of the Virgin Islands on behalf of the party and preserve the party's right to appeal in accordance with all applicable rules and laws.
- (c) Appointed counsel seeking to withdraw after the conclusion of the proceedings in this Court must, without undue delay, file a Motion for Leave to Withdraw as Counsel in the Superior Court and shall attach a copy of a Notice of Appeal or a sworn statement of the party, expressly indicating that he or she has chosen not to appeal despite having been made aware of the right to do so. As provided in V.I.S.CT.R. 210.3, in the event the Superior Court grants appointed counsel permission to withdraw after the Notice of Appeal has been filed, the attorney who has been granted permission to withdraw shall immediately notify the Supreme Court of the Virgin Islands of that fact and of the need to appoint an attorney to represent the litigant on appeal.

J. COMPENSATION.

- (a) Attorneys on the Indigent Criminal Defense Panels and Family Division Panels shall be compensated for work actually and necessarily performed on a case as determined by the Court following submission by the attorney to the Court after the case is closed of a voucher in a form designated by the Court (see Form B below). Vouchers submitted more than one hundred twenty (120) days after the case is closed or the appointment ends may be denied in the discretion of the Court. Interim compensation is disfavored, but may be allowed no more frequently than annually in the discretion of the Court.
- (b) The attorneys appointed under this Rule shall be compensated as follows:
 - (1) Tier 1 of the Indigent Criminal Defense Panel: One hundred dollars (\$100.00) per hour;
 - (2) Tier 2 of the Indigent Criminal Defense Panel: Seventy-five dollars (\$75.00) per hour;
 - (3) Family Division Panel: Seventy-five dollars (\$75.00) per hour; and
 - (4) Pro Bono Civil Division Panel: No compensation other than pro bono time credit.
- (c) The time of paralegals, secretarial, or administrative staff associated with the appointed attorney is not allowable.
- (d) Costs, other than those ordinarily included in office overhead, may be awarded by the Court on a case by case basis, except that the costs of computerized research shall not routinely be allowed. Extraordinary expenses, including those for investigators, expert witnesses, technical consultants, laboratory analysis, and the like, may not be incurred, and will not be reimbursed, in the absence of written approval by the Court prior to incurring the expenses.
- (e) A presumptive cap, representing the maximum allowable compensation exclusive of costs, regardless of the number of hours devoted to the representation, is established for each panel as follows:
 - (1) Tier 1 of the Indigent Criminal Defense Panel: Fifteen thousand dollars (\$15,000.00);
 - (2) Tier 2 of the Indigent Criminal Defense Panel: Seven thousand five hundred dollars (\$7,500.00);
 - (3) Family Division Panel: Ten thousand dollars (\$10,000.00).
 - (4) Compensation in excess of the presumptive cap shall not be permitted in the absence of demonstration of a compelling need to exceed the cap.
- (f) Appointed counsel may not require, request, or accept any payment or promise of payment or any other valuable consideration for representation under the appointment from any source other than the Superior Court unless the payment or consideration is approved by order of the Court.

K. ADMINISTRATION OF APPOINTMENTS.

(a) Selection of Attorneys to Serve on Panels.

- (1) The Clerk of the Superior Court, at the direction of the Superior Court and under the supervision of the Presiding Judge, shall accept, compile, and maintain all applications from attorneys interested in serving on a panel in accordance with the following procedure:
 - (i) An attorney may apply to serve on a panel by submitting an application, on a form prepared by the Clerk of the Superior Court (See Form C below).

- (ii) For the year of implementation of this Rule only, applications shall be submitted by February 15, 2016.
 - (iii) Thereafter, all applications for serving on a panel for the following year must be submitted to the Clerk of the Superior Court by November 15 of each year;
 - (iv) After receiving the responses of the members of the Bar, the Clerk of the Superior Court shall prepare and compile lists of the applicants volunteering to serve on each panel in each division and submit the lists and applications to the Presiding Judge for consideration and approval by December 1 of each year, except for the year of implementation of this Rule, during which the Clerk shall submit the lists and applications by February 20, 2016.
 - (v) Except in the year of implementation of this Rule, in which instance the deadline shall be February 25, 2016, by December 20 of each year, the Clerk of the Superior Court shall make accessible: (A) the final lists of attorneys approved by the Presiding Judge as members of each panel by maintaining a copy of the list and giving notice by posting; and (B) the pending applications list, consisting of the names of attorneys who have applied for membership on a panel and who do not yet possess sufficient skill, knowledge or experience to be a panel member, by maintaining a copy of the list in the Clerk's office, as provided in this Rule.
 - (vi) Appointments from the final lists shall begin on January 1 of each year, on a rotational basis and in alphabetical order, as established in this Rule, beginning at the alphabetical point of the last appointment of the previous year in the applicable panel, except in the year of implementation of this Rule, in which instance the appointments shall begin on March 1, 2016.
 - (vii) In order to encourage participation in the program and notwithstanding other provisions of this Rule, in the year of implementation of this Rule only, the Clerk of the Superior Court shall continue to accept applications until April 15, 2016. The Clerk of the Superior Court shall compile and submit the list of new applicants and their applications to the Presiding Judge for consideration and approval by May 1, 2016. The Clerk of the Superior Court shall make the lists accessible, as provided in Section (a)(1)(v), by May 20, 2016. Appointments from the updated final list shall begin on June 1, 2016.
- (2) The Presiding Judge will review and determine panel membership. The Presiding Judge will approve as members of the panel those attorneys he or she deems qualified based on the following factors:
- (i) competence and knowledge (including training);
 - (ii) interest and motivation; and
 - (iii) willingness to make the commitment to the panel and provide the quality of representation deemed necessary.
- (3) Once an eligible attorney is approved as a panel member and placed on a panel list, he or she need not reapply for panel membership for the following years, but must notify the Clerk of the Superior Court and Presiding Judge in writing as soon as reasonably possible in the event he or she is no longer eligible for panel membership. Voluntary resignation from a panel is permitted in accordance with the procedure set forth in this Rule.
- (b) **Pending Applications List.** If an applicant does not possess the necessary qualifications required for panel membership, the Presiding Judge shall place the applicant on a pending

applications list, which will include those attorneys who have applied for membership on a panel and who do not yet possess sufficient skill, knowledge or experience to be on the panel.

- (1) Pending final approval of their applications, attorneys on the pending applications list shall seek the training necessary to qualify for panel membership and may serve, without compensation, in a second chair capacity to a panel attorney on a given case, or aspects of a given case, as determined by the Court.
- (2) The Clerk of the Superior Court shall maintain the pending applications list. Panel attorneys will be advised of the existence of the pending applications list and will be expected to contact the Clerk's Office to obtain the names of people seeking to serve in a second chair capacity.
- (3) The Presiding Judge will periodically review the pending applications list and determine which attorneys should be moved onto an attorney panel.

(c) Administration of Non-Panel Appointments.

- (1) The Executive Director of the Virgin Islands Bar Association shall provide the Clerk of the Superior Court, on at least an annual basis, with the names, contact information, and Division of residence of all active attorneys admitted to practice in the Virgin Islands.
- (2) The eligible active members of the Virgin Islands Bar who reside outside the Virgin Islands may designate, in writing, a Division of the Court in which they wish to be appointed for the following year, but must do so, in writing by November 15 of each year. Those attorneys who do not designate either the Division of St. Croix or the Division of St. Thomas and St. John shall be divided in equal numbers between the two divisions.

(d) Maintenance of Appointments and Records.

- (1) The Clerk of the Superior Court shall maintain a master list of appointments made to:
 - (i) panel attorneys under this Rule;
 - (ii) non-panel attorneys under this Rule; and
 - (iii) the Territorial Public Defender. The lists shall be maintained in such form as the Presiding Judge may require and shall include:
 - a. the name of the attorney to whom the case was assigned;
 - b. the date of each appointment;
 - c. the case name and number; and
 - d. whether the person appointed counsel is an indigent defendant, as defined in Virgin Islands Code Annot., tit. 5, § 3503, or other party.
- (2) In addition, the Clerk of the Superior Court shall maintain:
 - (i) a master list of all attorneys on each Panel, designating whether the attorney is assigned to the Division of St. Croix or the Division of St. Thomas and St. John;
 - (ii) a master pending applications list of attorneys who have applied for membership on a panel but do not yet possess sufficient skill, knowledge or experience to be on the panel, as provided in this Rule;
 - (iii) a master list of all active members of the Virgin Islands Bar Association, designating whether the attorney is assigned to the Division of St. Croix or the Division of St. Thomas and St. John;
 - (iv) current statistics regarding the percentage of cases in which private attorneys are appointed to represent indigent criminal defendants, as required in Virgin Islands Code Annot., tit. 5, § 3503, whereby the Clerk of the Superior Court shall:

- a. maintain a separate master list of appointments made to panel and non-panel attorneys for the representation of indigent criminal defendants;
 - b. compile and maintain statistical data regarding the number of cases in which indigent criminal defendants are appointed counsel and the percentage of those cases assigned to private attorneys, including panel attorneys and active members of the Virgin Islands Bar Association;
 - c. regularly monitor the percentage of cases where private attorneys are appointed as counsel to indigent criminal defendants for the purpose of complying with the fifteen percent (15%) limitation imposed under Virgin Islands Code Annot., tit. 5, § 3503; and
 - d. immediately notify the Presiding Judge, in the form he or she may require, in the event private attorneys have been appointed as counsel for indigent criminal defendants in more than fourteen percent (14%) of cases.
- (3) To assist the Court in ensuring conflict-free representation and compliance with the percentage limitation contained in Virgin Islands Code Annot., tit. 5, § 3503, the Territorial Public Defender shall prepare semi-annual reports on court appointments in such form as the Presiding Judge may require, and submit such reports to the Presiding Judge and Clerk of the Superior Court.

APPENDIX OF FORMS

Form

- A. Affidavit of Financial Status
- B1. Voucher for Compensation and Expenses of Appointed Counsel- Criminal
- B2. Voucher for Compensation and Expenses of Appointed Counsel- Family
- C. Attorney Panel Application

SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. _____

_____)
_____)
_____)
 vs. _____) **CASE NO.** _____
_____)
_____)
_____)

AFFIDAVIT OF FINANCIAL STATUS

_____ (name of party), after being duly sworn, deposes and makes under oath the following statement regarding his or her financial status.

1. Your Full Name: _____

Date of Birth: _____ Age: _____

2. Address: _____
(Street) (City and State/Territory) (Zip code)

Telephone Number: _____ Judicial Division: _____

a. Do you reside in a public or private mental health care facility? _____ (Yes) _____ (No).

If yes, the party is entitled to a rebuttable presumption that he or she is indigent.¹

3. CURRENT HOUSEHOLD:

Marital Status: Single () Married () Divorced () Widowed () Intimate Partner: ()

Total Number of Dependents: _____

List of persons actually supported by you, your relationship to them, their age, and whether the person lives in the same residence as you:

Name	Relationship	Age	Resides with you? (yes or no)

¹ If further inquiry is made into the party's indigency, the party's "available funds" shall not include the liquid assets or disposable net monthly income of any member of the party's family.

4. EMPLOYMENT

What is your occupation? _____

Employment Status: Unemployed () Self-Employed () Employed ()

If you are employed, complete the following:

- a. Name of your employer: _____
- b. Address of your employer: _____
(Street) (City and State/Territory) (Zip Code)
- c. Length of time employed by present employer: _____
- d. Current position: _____

If you are unemployed, provide the following information:

- a. Name of Last Employer: _____
- b. Address of Last Employer: _____
(Street) (City and State/Territory) (Zip Code)
- c. Month and year of last employment: _____
- d. Length of time you have been unemployed: _____
- e. Monthly wages during last employment: _____

5. GROSS INCOME:

- a. State your gross earned income from wages and how often you are paid:
Weekly?___ Bi-Weekly?___ Monthly?___

Amount/month \$_____

- b. How much other income do you individually receive on a monthly basis?

Other income includes interest, dividends, rental income, and other earnings and cash payments, such as amounts received from pensions, support payments, annuities, social security, and public assistance programs. (Do not include any income earned or received by your spouse).

- A. Do you receive income or support from any of the following sources?

(If yes, state the monthly amount of each):

Amount Received	Source
\$	SSI (Supplemental Security Income)
\$	Medicaid
\$	AFDC (Aid to Families with Dependent Children)
\$	EAEDC (Emergency Aid to Elderly, Disabled and Children)
\$	Food Stamps
\$	Poverty related veterans' benefits
\$	Refugee resettlement benefits

Total amount/month: \$ _____

B. Excluding the benefits described in Section 5(b)(A), please indicate the amount of any other income received and identify the source.

Amount Received	Source
\$	
\$	
\$	

Total amount/month: \$ _____

c. What are your monthly deductions?

Amount deducted/month	Source of Deduction
\$	Federal Income Tax
\$	FICA
\$	Other (explain):

Total amount/month \$ _____

Total Net Monthly Income: (Question 5 (a) + (b)(A) + (b)(B) less (c)) \$ _____
[Net Monthly Income]

If party receives any of the public assistance benefits listed in Question 5(A) or receives an annual income of, after taxes, that is equal to or below 120 percent of the current federal poverty income guidelines prescribed for the size of the household of the party by the federal Department of Health and Human Services, the party is entitled to a rebuttable presumption that he or she is indigent.

6. BASIC LIVING COSTS

a. **Monthly Expenses.** List your monthly expenses for the following:

Rent: \$	Medical Insurance: \$	Education: \$
Lot Rent: \$	Medical Expenses: \$	Transportation: \$
House Note: \$	Dental Expenses: \$	Vehicle Note*: \$
House Insurance: \$	Prescriptions: \$	Vehicle Insurance*: \$
Gas: \$	Daycare: \$	Food: \$
Electricity: \$	Child Support:\$	Garnishment: \$
Water: \$	Spousal Support: \$	Other: \$
Telephone: \$	Property Taxes: \$	

*To qualify as a basic living cost, you must use your vehicle to maintain your employment.

Total amount/month: \$_____

b. **Credit Cards.** List your monthly credit card payments and balances due:

Credit Card Name	Monthly Payment	Balance Due
	\$	\$
	\$	\$
	\$	\$

Total amount/month: \$_____

c. **Financial Loans.** List the financial institution and your monthly payment:

Name of Financial Institution	Monthly Payment
	\$
	\$
	\$

Total amount/month: \$_____

Total Monthly Basic Living Costs (Question 6 (a) + (b) + (c))

\$_____ **[Monthly Basic Living Costs]**

7. DISPOSABLE NET MONTHLY INCOME

To determine disposable net monthly income, deduct total monthly basic living expenses from the total net monthly income (Question 5 less Question 6).

\$ _____ [Disposable Net Monthly Income]
--

8. LIQUID ASSESTS

Do you own or have an interest in any of the following?

Type of Asset	Value of Interest	Balance Owed
House	\$	\$
Vehicle (not used to maintain employment)	\$	\$
Watercraft (not used to maintain employment)	\$	\$
Livestock	\$	\$
Machinery	\$	\$
Stocks	\$	
Bonds	\$	
Certificates of Deposit	\$	
Other personal property*	\$	\$
Other real property*	Equity \$	Debt \$

*Property is reasonably convertible to cash.

Do you have a bank account? _____ (Yes) _____ (No)

Amount in Checking account: \$ _____ Amount in Savings account: \$ _____

Amount in other bank account: \$ _____ (Describe): _____

Total Value of Party's Liquid Assets:

\$ _____
[Party's Individual Liquid Assets]

9. AVAILABLE FUNDS

a. Available funds of party's household.

Do you live in the same residence as your spouse (or person in substantially the same relationship), parent(s), or guardian(s)? _____ (Yes) _____ (No).

If yes, does the person contribute substantially toward your household's basic living expenses?
_____ (Yes) _____ (No).

If yes, provide in subpart (d) information regarding the available funds of the person(s) unless he/she/they has/have an adverse interest in the proceeding, in which case, briefly explain the circumstances: _____

b. Available funds of a party over sixteen supported by another.

If you are over the age of sixteen (16), please indicate:

Whether your parent(s) or guardian(s) substantially support you or claim you as a dependent for tax purposes: _____ (Yes) _____ (No).

If yes, provide in subpart (d) information regarding the available funds of the person(s) unless he/she/they has/have an adverse interest in the proceeding, in which case, briefly explain the circumstances: _____

c. Available funds of a party under seventeen:

If you are under the age of seventeen (17), please indicate:

Your current age: _____ years old

Whether your parent(s) or guardian(s) have an adverse interest in this proceeding:
_____ (Yes) _____ (No).

If yes, briefly explain: _____

If no, provide in subpart (d) information regarding the available funds of your parent(s) or guardian(s).

d. Determination of available funds of other persons.

According to your answers to subparts (a) – (c), please provide the following information regarding the available funds of your parent(s), guardian(s), or spouse (or person in substantially the same relationship):

Name/Relationship	Liquid Assets	Disposable Net Monthly Income	Available Funds*

*To determine available funds, calculate the sum of the person's liquid assets and disposable net monthly income

Total amount: \$ _____

e. **Determination of party's total available funds.**

Please provide the following information to determine your total available funds.

Individual's total value of liquid assets (Question 8)	\$
Individual's disposable net monthly income (Question 7)	\$
Available funds of other person(s), if applicable (Question 9 (d))	\$
Party's bail obligations, if applicable	\$

To determine total available funds, calculate the sum of the party's individual liquid assets, disposable net monthly income, available funds of other persons, less the party's bail obligations.

<p>\$ _____</p> <p>[Party's Total Available Funds]</p>

f. If you have no available funds, please answer the following:

Are you serving a sentence in a correctional institution? _____ (Yes) _____ (No).

Are you currently in custody in jail? _____ (Yes) _____ (No).

If yes to either, the party is entitled to a rebuttable presumption that he or she is indigent.

g. If the party is not entitled to a presumption of indigency, taking into account the anticipated length and complexity of the proceedings and the usual and customary charges of an attorney in the community for rendering services:

A. The party is indigent and eligible for appointment of counsel if his or her total available funds are equal to or below 120 percent of the current federal poverty income guidelines prescribed for the size of the household of the party by the federal Department of Health and Human Services;

B. If the available funds of the accused exceed 120 percent of the current federal poverty income guidelines, the Court may, in exceptional circumstances, and where the ends of justice so require, appoint an attorney to represent the party.²

² In making such appointments, the Court shall state in writing its reasons for so doing. The written statement by the Court shall be included in the record of the case.

The party _____, after being duly sworn and deposed, further said that:

1. He or she provided the information above and that the information is furnished to the Court for the purpose of requesting the appointment of counsel due to indigency;
2. The above information is a true and correct statement of his or her financial condition;
3. The pleading and all allegations of fact therein are true and correct and that because of his or her poverty and want of means, he or she is unable to afford to retain counsel;
4. He or she understands that the Court may inquire into his or her financial status at any time during the proceedings to determine whether he or she remains financially unable to employ counsel under Super. Ct. R. 20.

Party's Signature

Sworn and subscribed before me

this _____ day of _____, 20_____

NOTARY PUBLIC

2015 POVERTY GUIDELINES

ALL STATES (EXCEPT ALASKA AND HAWAII) AND D.C.

ANNUAL GUIDELINES

FAMILY SIZE	PERCENT OF POVERTY GUIDELINE										
	100%	120%	133%	135%	140%	145%	150%	175%	185%	200%	250%
1	11,770.00	14,124.00	15,654.10	15,889.50	16,478.00	17,066.50	17,655.00	20,597.50	21,774.50	23,540.00	29,425.00
2	15,930.00	19,116.00	21,186.90	21,505.50	22,302.00	23,098.50	23,895.00	27,877.50	29,470.50	31,860.00	39,825.00
3	20,090.00	24,108.00	26,719.70	27,121.50	28,126.00	29,130.50	30,135.00	35,157.50	37,166.50	40,180.00	50,225.00
4	24,250.00	29,100.00	32,252.50	32,737.50	33,950.00	35,162.50	36,375.00	42,437.50	44,862.50	48,500.00	60,625.00
5	28,410.00	34,092.00	37,785.30	38,353.50	39,774.00	41,194.50	42,615.00	49,717.50	52,558.50	56,820.00	71,025.00
6	32,570.00	39,084.00	43,318.10	43,969.50	45,598.00	47,226.50	48,855.00	56,997.50	60,254.50	65,140.00	81,425.00
7	36,730.00	44,076.00	48,850.90	49,585.50	51,422.00	53,258.50	55,095.00	64,277.50	67,950.50	73,460.00	91,825.00
8	40,890.00	49,068.00	54,383.70	55,201.50	57,246.00	59,290.50	61,335.00	71,557.50	75,646.50	81,780.00	102,225.00

For family units of more than 8 members, add \$4,160 for each additional member.

MONTHLY GUIDELINES

FAMILY SIZE	PERCENT OF POVERTY GUIDELINE										
	100%	120%	133%	135%	140%	145%	150%	175%	185%	200%	250%
1	980.83	1,177.00	1,304.51	1,324.13	1,373.17	1,422.21	1,471.25	1,716.46	1,814.54	1,961.67	2,452.08
2	1,327.50	1,593.00	1,765.58	1,792.13	1,858.50	1,924.88	1,991.25	2,323.13	2,455.88	2,655.00	3,318.75
3	1,674.17	2,009.00	2,226.64	2,260.13	2,343.83	2,427.54	2,511.25	2,929.79	3,097.21	3,348.33	4,185.42
4	2,020.83	2,425.00	2,687.71	2,728.13	2,829.17	2,930.21	3,031.25	3,536.46	3,738.54	4,041.67	5,052.08
5	2,367.50	2,841.00	3,148.78	3,196.13	3,314.50	3,432.88	3,551.25	4,143.13	4,379.88	4,735.00	5,918.75
6	2,714.17	3,257.00	3,609.84	3,664.13	3,799.83	3,935.54	4,071.25	4,749.79	5,021.21	5,428.33	6,785.42
7	3,060.83	3,673.00	4,070.91	4,132.13	4,285.17	4,438.21	4,591.25	5,356.46	5,662.54	6,121.67	7,652.08
8	3,407.50	4,089.00	4,531.98	4,600.13	4,770.50	4,940.88	5,111.25	5,963.13	6,303.88	6,815.00	8,518.75

Produced by: CMCS/CAHPG/DEEO

SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

Voucher No.....

VOUCHER FOR COMPENSATION AND EXPENSES OF APPOINTED COUNSEL-CRIMINAL

To:
Name of Payee Address

Pursuant to the authorization contained in the attached copy of the **ORDER APPOINTING COUNSEL** in the case of People of the Virgin Islands vs.....
Criminal Case No....., claim hereby is made for compensation and expenses of representation. Please attach an itemized billing statement detailing the date, work performed, person performing the work, position and billing rate of the person performing the work, the time devoted to each task, and specific description of the costs incurred.

I. TIME SPENT IN OPEN COURT:	Date	Hours
a) Arraignment and plea
b) Plea (when separate from arraignment)
c) Sentence hearing
d) Continuances
e) Trial (list time for each day separately)

f) Other (specify)
.....
.....
II. TIME SPENT IN PREPARATION (OUT OF COURT)		
a) Interviews with client

b) Legal Research

c) Investigative work-		
Interviews with witnesses
Consultation with prosecuting officials
Consultation with probation officers

d) Other (specify)

.....
.....

III. EXPENSES OF REPRESENTATION (ITEMIZE)

Amount

.....
.....
.....
.....

IV. If compensation and/or reimbursement for representation in this case has been applied for or received, give details regarding all applications and payments.

.....
.....
.....

CLAIM: Partial Final Full

Item I Hrs.
Item II Hrs.
Item III Hrs.
Item IV Hrs.

ALLOWANCE:

Item Ihrs. @ \$.....per. hr. \$.....
Item IIhrs. @ \$.....per. hr. \$.....
Item IIIhrs. @ \$.....per. hr. \$.....
Item IVhrs. @ \$.....per. hr. \$.....

Total.....\$.....

Certified Correct

Payment has not been received and, except as noted in item IV above, no payment or promise of payment has been requested or accepted for representing the client.

Date.....

.....
(Signature of Payee)

.....
(Judge)

.....
(Title)

Date.....

SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

Voucher No.....

VOUCHER FOR COMPENSATION AND EXPENSES OF APPOINTED COUNSEL-FAMILY

To:
Name of Payee Address

Pursuant to the authorization contained in the attached copy of the **ORDER APPOINTING COUNSEL** in the case ofvs.....
Case No....., claim hereby is made for compensation and expenses of representation. Please attach an itemized billing statement detailing the date, work performed, person performing the work, position and billing rate of the person performing the work, the time devoted to each task, and specific description of the costs incurred.

I. TIME SPENT IN OPEN COURT:	Date	Hours
a) Hearing (specify)		
.....
.....
b) Trial (list time for each day separately)		
.....
.....
.....
c) Other (specify)		
.....
.....
.....
.....
II. TIME SPENT IN PREPARATION (OUT OF COURT)		
a) Interviews with client		
.....
.....
b) Legal Research		
.....
.....
c) Investigative work (specify)		
.....
.....

d) Other (specify)

.....
.....

III. EXPENSES OF REPRESENTATION (ITEMIZE)

Amount

.....
.....
.....
.....

IV. If compensation and/or reimbursement for representation in this case has been applied for or received, give details regarding all applications and payments.

.....
.....
.....

CLAIM: Partial Final Full

Item I Hrs.
Item II Hrs.
Item III Hrs.
Item IV Hrs.

ALLOWANCE:

Item Ihrs. @ \$.....per. hr. \$.....
Item IIhrs. @ \$.....per. hr. \$.....
Item IIIhrs. @ \$.....per. hr. \$.....
Item IVhrs. @ \$.....per. hr. \$.....
Total.....\$.....

Certified Correct

Payment has not been received and, except as noted in item IV above, no payment or promise of payment has been requested or accepted for representing the client.

Date.....

.....
(Signature of Payee)

.....
(Judge)

.....
(Title)

Date.....

**SUPERIOR COURT OF THE VIRGIN ISLANDS
ATTORNEY PANEL APPLICATION**

APPLICANT INFORMATION:

Name: _____

Bar Roll No.: _____

Telephone: _____

E-Mail: _____

Address: (include firm name, if any)

DATE OF BAR ADMISSIONS:

Please specify the courts and jurisdictions in which you are admitted to practice and dates of admission:

PANEL DESIGNATION:

Please indicate the panel(s) you are applying for:

<u>Division of St. Thomas and St. John</u>	<u>Division of St. Croix</u>
_____ Tier 1: Indigent Criminal Defense Panel	_____ Tier 1: Indigent Criminal Defense Panel
_____ Tier 2: Indigent Criminal Defense Panel	_____ Tier 2: Indigent Criminal Defense Panel
_____ Family Division Panel	_____ Family Division Panel
_____ Pro Bono Civil Division Panel	_____ Pro Bono Civil Division Panel

Have you ever served on a panel of this nature? _____ Yes _____ No
(If yes, state where and when)

QUESTIONS RELATING TO CIVIL, CRIMINAL, JUVENILE, AND GUARDIAN AD LITEM/FAMILY LAW EXPERIENCE:

Have you ever been employed as a Public Defender? _____ Yes _____ No
(If yes, state where, when, and for what period of time)

Have you ever worked as a prosecuting attorney? _____ Yes _____ No
(If yes, state where, when, and for what period of time)

Have you ever attended training programs focusing on criminal practice, juvenile, guardian ad litem, or family law? _____ Yes _____ No
(If yes, state where and when) (Applicants may attach a list if necessary)

Do you have other application experience or training? _____ Yes _____ No
(If yes, state where, when, and nature of training or experience)

How many trials have you personally conducted?

_____ Jury Trials	_____ Bench Trials
_____ % as Defense Attorney	_____ % as Prosecutor
_____ % Primarily Responsible	_____ % as Second Chair

Please give range regarding the lengths of these trials: _____

How many guilty pleas have you handled? _____

_____ % as Defense Attorney	_____ % as Prosecutor
-----------------------------	-----------------------

Please describe the types of cases you have handled.

Please indicate your juvenile and guardian ad litem/family law litigation experience by providing examples of your practice and types of cases (JD, J.P., Guardian Ad Litem), fact finding involvement, length, etc.

Miscellaneous Information:

Please indicate your civil litigation experience by providing examples of your practice, types of cases, trial involvement, length, etc.

Please indicate any other relevant experience which explains why you would like to be on the attorney panel.

QUESTIONS RELATING TO APPELLATE EXPERIENCE:

Please explain your appellate experience by providing the following information:

Number of appellate briefs written to any appellate courts.

Number of oral arguments you participated in and the names of the courts in which arguments were presented.

I have read Superior Court Rule 20, which governs the appointment of counsel to attorney panels. By completing this application, I am agreeing to abide by the provisions as outlined in the Rule and all applicable legal and ethical requirements.

Signature

Date

****Please submit applications to the Clerk of the Superior Court.**