

February 18, 2016

VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

In re: JUSTIN K. HOLCOMBE, ESQ.,)	S. CT. CIV. NO. 2015-0007
)	
Appellant.)	Re: Super. Ct. Crim. No. ST-12-CR-448
_____)	
)	
THE PEOPLE OF THE VIRGIN ISLANDS,)	
Plaintiff/Interested Party,)	
)	
v.)	
)	
RALPH EDWARDS TITRE, JR.,)	
Defendant/Interested Party.)	
_____)	

EXHIBIT 3

November 2015 Proposal

**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 to all members of the bar, the Court has determined that it will adopt, on a trial basis, a pilot system involving appointments from a panels of attorneys trained and experienced in criminal law who are willing to accept criminal appointments. The Court will review the effectiveness of this system annually to determine whether adjustment is appropriate.

Additionally, the Court has determined that fairness requires that all members of the Virgin Islands Bar, including those who reside outside the Virgin Islands, share responsibility for the representation of indigent persons, juveniles, parties in abuse and neglect cases, guardianship matters, and others in cases in the Family Division of the Court, and for representation of certain previously self-represented civil litigants.

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) PANELS OF ATTORNEYS

(1) Indigent Criminal Defense Panels.

In criminal cases in which the Court finds that the accused is indigent and either (A) the Territorial Public Defender is determined by the Court to have a conflict of interest, or (B) the case involves multiple defendants whom 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. 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. 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.

(2) Family Division Panels.

In cases in the Family Division of the Court in which the Court finds that a party is indigent and either (A) the Territorial Public Defender is determined by the Court to have a conflict of interest, or (B) the case involves multiple parties who the Court

determines cannot be represented by the same attorney, or (C) the person is entitled to representation pursuant to Virgin Islands Code Ann., 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.

(3) 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 (A) an unrepresented party is indigent and requires the appointment of counsel to protect the party's rights, or (B) the case involves complex issues that require the input of trained counsel, or (C) the failure of one or more of the parties to have legal representation interferes with the orderly advancement of the case, or (D) 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 are not members of either the Indigent Criminal Defense Panel or the Family Division Panel and who are (A) not employed by the Government of the Virgin Islands or one of its departments, agencies, or semi-autonomous entities, or (B) serving on the Bar Examination, Judicial Conduct, Ethics and Grievance, or Unauthorized Practice of Law Committees of the Virgin Islands Bar.

(b) ADMINISTRATION OF THE PANELS.

(1) (A) By November 1 of each year, the Executive Director of the Virgin Islands Bar Association shall advise all active members of the Bar that volunteers for each tier of the Indigent Criminal Defense Panels and for the Family Division Panels for the following year must indicate their preference in writing by November 20 of that year. Eligible active members of the Virgin Islands Bar who reside outside the Virgin Islands and do not volunteer to serve on either the Indigent Criminal Defense Panel or the Family Division Panel may designate a Division of the Court in which they wish to serve on the Pro Bono Civil Division Panel.

(B) After receiving the responses of the members of the Bar, the Executive Director shall prepare lists of those members volunteering to serve on each panel in each division and forward those lists to the Clerk of the Superior Court by December 10. The eligible active members of the Virgin Islands Bar who reside outside the Virgin Islands 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.

(C) By December 20, the Clerk of the Court shall provide the Executive Director with the final lists of attorneys in each panel.

(D) Appointments from the final lists shall begin on January 1, in alphabetical order, beginning at the alphabetical point of the last appointment of the previous year in the applicable panel.

(2) Attorneys shall be required to serve on at least one (1) panel, but may volunteer to serve on any number of panels. Appointments shall be made from each panel on a rotational basis, in alphabetical order, although the Court may select a particular attorney from a panel should it determine that justice so requires. The provisions of this Rule notwithstanding, the Court may appoint an attorney in a case that is outside the panel for which the attorney has volunteered or been designated when there is an insufficient number of volunteers for a particular panel or when the Court determines that the interests of justice so require.

(3) In carrying out their 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 Rule 211 of the Virgin Islands Supreme Court Rules or as later provided by the Supreme Court. 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 should otherwise be disclosed.

(4) 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 after the case is closed of a voucher in a form designated by the Court. 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 should an appointment extend for a period in excess of two (2) years.

(5) The attorneys appointed under this Rule shall be compensated as follows:

(A) Tier 1 of the Indigent Criminal Defense Panel: One hundred dollars (\$100.00) per hour;

(B) Tier 2 of the Indigent Criminal Defense Panel: Seventy-five dollars (\$75.00) per hour;

(C) Family Division Panel: Seventy-five dollars (\$75.00) per hour; and

(D) Pro Bono Civil Division Panel: No compensation.

(E) The time of paralegals, secretarial, or administrative staff associated with the appointed attorney is not allowable.

(F) 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.

- (6) 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:
- (A) Tier 1 of the Indigent Criminal Defense Panel: Twelve thousand five hundred dollars (\$12,500.00);
 - (B) Tier 2 of the Indigent Criminal Defense Panel: Five thousand dollars (\$5,000.00);
 - (C) Family Division Panel: Seven thousand five hundred dollars (\$7,500.00).
 - (D) Compensation in excess of the presumptive cap shall not be permitted in the absence of demonstration of a compelling need to exceed the cap.
- (7) 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. This provision notwithstanding, the appointed counsel remains 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.
- (8) The Executive Director of the Virgin Islands Bar shall provide the Clerk of the Court, on at least a quarterly basis, with the names, contact information, and Division of residence of all active attorneys admitted to practice in the Virgin Islands. The Clerk of the Court shall keep accurate lists of the appointments made under this Rule in such form as the Presiding Judge may require.
- (9) The Court reserves the right to appoint an attorney to represent any person unable to employ counsel as provided in Virgin Islands Code Ann., tit. 4, § 513(d), as otherwise provided by law, or as justice so requires.