

**SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISIONS OF ST. THOMAS AND ST. JOHN AND ST. CROIX**

IN RE:)
)
AMENDMENTS TO THE RULES OF THE)
SUPERIOR COURT)
)
_____)


MISC. NO. 29/09

ORDER

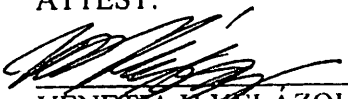
It is hereby **ORDERED** that, pursuant to the provisions of Section 21(c) of the Revised Organic Act of 1954, as amended, and 4 V.I.C. §§ 72b, 123(b), and 125, the rules of the Superior Court of the Virgin Islands are amended to add new Sections 1.1, 320, 321, 322, 323, 324, 325, and 326, and to amend Sections 122, 123, 125, 141, 310.2, 318.1, and 318.2. These amendments shall become effective January 1, 2010.

The amended rules are attached to this Order.

DATED: December 31ST, 2009


DARRYL DEAN DONOHUE, SR.
PRESIDING JUDGE

ATTEST:

 12/31/09
VENERIA H. VELÁZQUEZ, ESQ.
CLERK OF THE COURT

cc: Judges of the Superior Court
Justices of the Supreme Court
Members of the Virgin Islands Bar
Library (For Publication)
Order Book

Rule 1.1 Judges and Magistrates

“Judge” refers to a judge appointed by the Governor with the advice and consent of the Legislature in accordance with 4 V.I.C. § 72(a). “Magistrate” refers to a judicial officer appointed by the Presiding Judge in accordance with 4 V.I.C. § 122(a).

Wherever the word “judge” appears, such authority may also be granted to a magistrate of the Superior Court to the extent not inconsistent with the rules of the Superior Court or any applicable statute.

Amendment to Rule 122. Warrant or summons

(1) Rule 122 is hereby amended by adding a new subsection (b) to read as follows: “Applications for warrants for the arrest of individuals charged with the offense of Murder in the First Degree, or for search warrants associated with the offense of Murder in the First Degree, must be presented to a judge of the Superior Court, and such warrants may be issued only by a judge of the Superior Court.

i. An arrest for violation of conditions of release may be made without a warrant and does not require a new charging document.

ii. Upon arrest for violation of conditions of release or probation, the violator shall be brought before the judge who set the conditions or before a magistrate. (See also Superior Court Rules 320(b)(3) and (4).”

(2) All subsequent subsections are hereby redesignated accordingly.

Amendments to Rule 123. Preliminary proceedings before judge

(1) Rule 123 is hereby amended in the following instances:

(a) The heading shall read as follows: “Rule 123. Preliminary proceedings before judge or magistrate

(b) Rule 123(a)(1): Delete “11:00 a.m.” where it appears and insert in lieu thereof “9:00 a.m.”

(c) Rule 123(a)(2): Delete “ by 9:00 a.m.” where it appears and insert in lieu thereof “as early as practicable and, in any event, no later than 8:00 a.m. on the given day”. Delete “10:30 a.m.” where it appears and insert in lieu thereof “8:30 a.m.”

(d) Rule 123(b)(1): Insert the words “or magistrate” after the word “judge” in the fourth sentence.

(e) Rule 123(b)(2): Insert the words “or magistrate” after the word “judge” in the first sentence.

(f) Rule 123(b): Add a new subsection 5. to read as follows:

“5. *Preliminary Proceedings in First Degree Murder Cases.* All cases in which the offense charged is Murder in the First Degree shall be immediately referred to a judge of the Superior Court for all proceedings, to include advice of rights, probable cause hearings, issuance of arrest and search warrants, motions for reduction of bail or detention, and arraignment proceedings. Accordingly, the Clerk of the Court shall refer all such matters to a trial judge. The Clerk of the Court shall, further, immediately upon arraignment assign all cases in which the defendant is charged with Murder in the First Degree to a judge of the Superior Court in accordance with the regular rotational schedule.

Amendment to Rule 125. Arraignment

Rule 125 is hereby amended by adding a new sentence at the end of the paragraph to read as follows: “If a defendant elects to enter a plea of guilty at arraignment, that plea will be taken by the judge or magistrate assigned to that case.”

Amendment to Rule 141. Right to bail before conviction.

(1) Rule 141 is hereby amended by inserting the phrase “or magistrate” after the word “judge” wherever it may appear.

Add a new subsection (e) to read as follows:

“(e) Review of Bail Decision. If a party is dissatisfied with a bail decision rendered by a magistrate, it may be immediately appealed to the assigned judge or the Presiding Judge.”

Amendment to Rule 310.2 Selection and appointment of Magistrates

Rule 310.2 is hereby amended by adding a new subsection (c) to read as follows:

“(c) In accordance with 4 V.I.C. §121, magistrates are judicial officers and shall be supervised and directed in the performance of their duties by the Presiding Judge pursuant to 4 V.I.C. §72b.”

Amendment to Rule 318.1 Duty to disclose disqualification.

Rule 318.1 is hereby amended by adding a sentence at the end of the paragraph to read as follows: “In any event, the magistrate must state the reason for the disqualification and adhere to the provisions of 4 V.I.C. §284.”

Rule 318.2 Substitution for disqualified magistrate

If a magistrate in one district disqualifies him/herself to sit or act in an action or proceeding, that matter will be referred for assignment to the other magistrate in that district. If both magistrates in one district disqualify themselves, a magistrate from the other district shall travel to the district where the matter is pending and hear such matter. If the magistrates from both districts disqualify themselves, a judge in the district where the matter is pending shall hear the matter.

Rule 320. Magistrates: Powers Designated by Judge

(a) *General.* Pursuant to 4 V.I.C. §123(b)(1) and (2), the Presiding Judge may assign a magistrate to hear and determine any pretrial matter, requested by a judge of the Superior Court, pending before the court (except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, for dismissal or quashing an indictment or information made by the defendant, suppression of evidence in a criminal case, dismissal or to permit maintenance of a class action, dismissal for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action), including matters before the Family Court; and to conduct hearings, including evidentiary hearings, to submit proposed findings of fact and recommendations for the disposition, by a Superior Court Judge, of any motion pertaining to the application of post-trial relief made by individuals convicted of criminal offenses and a prisoner’s petition challenging conditions of confinement.

(b) *Procedures for designating a magistrate.* A judge of the Superior Court who wishes to utilize a magistrate to hear matters pursuant to 4 V.I.C. §123(b)(1) and (2) must complete and submit the form “Request For Designation of Magistrate” to the Presiding Judge or his designee, who shall forward it to the Clerk of the Court. The Clerk’s office shall assign the magistrate who is next in the regular rotation for assignments and indicate same in the space provided on the designation form. The Clerk shall enter the request and the designation on the official docket of the affected case(s). A copy of the

designation form shall be served on the parties and on the designated magistrate. (See Form D.)

(1) *Pretrial Matters.* A magistrate may hear and determine pretrial matters pending before the court, including matters before the Family Court, except a motion for injunctive relief in non-domestic violence cases, for judgment on the pleadings, for summary judgment, for dismissing or quashing an indictment or information made by the defendant, suppression of evidence in a criminal case, dismissal or to permit maintenance of a class action, dismissal for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action.

(2) *Nondispositive Matters.* When a pretrial matter not dispositive of a party's claim or defense is referred to a magistrate to hear and decide, the magistrate must promptly conduct the required proceedings and, when appropriate, issue a written order stating the decision. A party may serve and file a motion for reconsideration to the order within ten (10) days after being served with a copy of order. The motion for reconsideration shall be served upon the judge assigned to the case. Unless a stay is requested and good cause shown, as determined by the judge, the magistrate's order will not be stayed pending the result of the motion for reconsideration. A party may not assign as error a defect in the order not timely objected to.

(3) *Warrants.* Applications for warrants of arrest of individuals charged with the offense of Murder in the First Degree, or for search warrants associated with any offense of Murder in the First Degree, must be presented to a judge of the Superior Court, and such warrants may be issued only by a judge of the Superior Court. All other warrants may be issued by a magistrate of the Superior Court. Violation of conditions of release does not require a new charging document, however, violators may be arrested and brought before the assigned judge or, if not yet assigned, before the magistrate who set the conditions of release. Warrants issued for violation of conditions of probation shall be heard by the sentencing judge or the judge to whom the case is assigned. (See also Superior Court Rule 123(b).)

(4) *Murder in the First Degree.* Defendants charged with the offense of Murder in the First Degree, in violation of 14 V.I.C. §922(a), must be brought before a judge of the Superior Court for probable cause hearings, if any, and arraignment. After the defendant is advised of his or her rights by the trial judge presiding over such preliminary proceedings, the Clerk of the Court shall immediately assign a judge of the Superior Court to the case in accordance with the trial judges' rotational assignment schedule. The judge to whom the case is assigned shall hear all pretrial matters in First Degree Murder cases, including motions for reduction of bail or detention. (See also Superior Court Rule 123(b).)

(c) *Reconsideration of Pretrial Matters.* A judge of the Superior Court may reconsider any pretrial matter assigned to a magistrate pursuant to this rule, *sua sponte* or on motion by a party, where it has been shown that the magistrate's order is clearly erroneous or contrary to law. The judge should consider timely objections and modify or set aside any part of the order that is clearly erroneous or contrary to law.

(1) *Timing.* Once the magistrate issues a written order stating the decision in a pretrial matter not dispositive of a party's claim or defense, a party may serve and file a motion to reconsider the order within ten (10) days after being served with a copy. Such motions for reconsideration shall be directed by the Clerk of the Court to the trial judge to whom the case was initially assigned. Within thirty (30) days of the date of entry of the magistrate's order, the trial judge assigned to the case shall review the issues timely objected to and set aside any part of the order that is clearly erroneous or contrary to law.

(2) *Filing of Objections.* The party must file an objection to a magistrate's pretrial order with the Clerk of the Court and serve a copy on the other party. The adverse party shall have ten (10) days within which to file a response. After receipt of the party's response, or after expiration of ten (10) days after filing of the objection, the Clerk of the Court shall cause a copy to be delivered to the trial judge assigned to the case.

(3) *Resolving Objections.* The trial judge assigned to the case shall review the issues timely objected to and set aside any part of the order that is clearly erroneous or contrary to law. The trial judge shall enter an order granting or denying the motion for reconsideration and stating the reasons therefore. The Clerk of the Court shall serve the orders granting or denying reconsideration on the parties and on the magistrates, and shall enter the same on the official docket.

(d) *Disposition of Prisoner Petitions.*

(1) *Findings and Recommendations.* Pursuant to 4 V.I.C. §123(b)(2), a magistrate may be designated to conduct hearings, including evidentiary hearings, to submit proposed findings of fact and recommendations for the disposition, by a judge of the Superior Court, of any motion, regarding the application of post-trial relief made by individuals convicted of criminal offenses and a prisoner's petition challenging conditions of confinement. The magistrate must promptly conduct the required proceedings, maintain a record of all proceedings, and enter a recommended disposition including, if appropriate, proposed findings of fact. The Clerk must serve a copy to each party and transmit a copy to the assigned judge.

(2) *Objections.* Within twenty (20) days after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations. A party may respond to another party's objections within twenty (20) days after being served with a copy. Unless the judge of the Superior Court orders otherwise, the objecting party must promptly arrange for transcribing the record, or whatever portions of it the parties agree to or the magistrate considers sufficient.

(3) *Resolving Objections.* The judge of the Superior Court must review de novo any part of the magistrate's disposition that has been properly objected to. The judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate with instructions. After affording the parties an opportunity to object thereof, the trial judge may accept, reject, or modify the recommended disposition and shall enter an order to that effect.

(4) *Magistrate's Findings.* The magistrate's findings do not constitute a final judgment and only the trial judge's order will be controlling.

Rule 321. Magistrates: Trial by Consent; Appeal

(a) *General.* Pursuant to 4 V.I.C. §123(d), upon consent of the parties and approval of the Presiding Judge, a magistrate may conduct all proceedings in a jury or non-jury civil matter, including trial and may enter a judgment in the case. A record must be made of all proceedings.

(b) *Approval.* Approval may be withheld by the Presiding Judge based upon the availability of resources and avoidance of undue burden on the court.

(c) *Consent Procedures.*

(1) *In General.* The parties to all civil actions must be notified by the court of the availability of a magistrate to conduct proceedings in jury or non-jury civil matters upon filing of civil actions. The Clerk of the Court shall provide such notification by

“Notice of Availability of Magistrate” form. To indicate consent, all parties to an action must sign the form “Consent to an Assignment to a Magistrate” or a stipulated motion executed by all parties. Plaintiff shall be responsible for securing the necessary signatures. Upon the filing of the consent documents, the Clerk of the Court shall enter the same unto the docket and submit them to the Presiding Judge for approval. The Presiding Judge may indicate approval, within his discretion, by entering a written Order of Assignment to a Magistrate. The Clerk shall then assign the matter to the next magistrate in the rotation pursuant to the regular rotational assignment schedule. The Clerk shall thereupon enter the Order of Assignment onto the official docket. (See Forms A, B, and C.)

(2) *Time to Consent.* The consent to have a magistrate conduct the proceedings in a jury or non-jury civil matter must be submitted to the Presiding Judge within fifteen (15) days after the completion of all initial pleadings as set forth in Fed. R. Civ. P. 7(a) in the affected case. Failure to do so shall result in the proceeding being assigned to a trial judge pursuant to the court’s rotational schedule.

(3) *Right to Withhold Consent.* The parties must be notified of the magistrate’s availability to conduct civil actions or proceedings but must also be advised that they are free to withhold consent without adverse substantive consequences and that the identity of any party consenting or withholding consent will not be disclosed to the trial judge to whom the case is assigned or to any magistrate.

(4) *Appealing Judgment.* A judgment entered by a magistrate in a jury or non-jury civil action under this provision is an Order of the Court, appealable to the Supreme Court of the Virgin Islands.

(5) *Maintenance of Assignment Log.* The Clerk of the Court shall maintain a log of assignments made to the magistrates by consent and designation, which shall identify the date of the assignment or designation, the caption and case number, and the cause of action.

Rule 322. Review of Magistrate Decision; Appeals

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Rule 323. Motions Pursuant to 14 V.I.C. §4

14 V.I.C. §4; Motions for Bench Trial. Pursuant to 14 V.I.C. § 4, trial judges are authorized to limit the term of imprisonment in misdemeanor cases to six months on motion by a party, except in cases where a mandatory sentence is imposed, in which event the defendant may be tried by the court. Motions to limit the term of sentence to six months, pursuant to 14 V.I.C. §4, shall be referred to the assigned trial judge for review and approval, where the possible sentence for the offenses charged is in excess of six (6) months imprisonment. Upon approval by a judge, the case shall be referred to a magistrate pursuant to a rotational assignment schedule. This rule recognizes the limited jurisdiction of magistrates in criminal matters, which deprives a magistrate of considering motions pursuant to 14 V.I.C. § 4 where the defendant faces possible imprisonment in excess of six months for the crimes charged.

Rule 324. Published Opinions by Magistrates

(a) *General.* No magistrate opinions shall be published unless and until they have

been approved for publication, in writing, by the Presiding Judge.

(b) *Opinions for Publication.* An opinion may be approved for publication where it addresses a novel, constitutional issue. Such determination shall be made by the Presiding Judge.

Rule 325. Calendar and docket

To maintain uniformity in procedures within the Magistrate Division and to maximize the resources of the Court while providing the best possible service to the general public, all calendars and dockets prepared by the clerk of the court must be adhered to and can only be amended by the clerk of the court with the prior written approval of the Presiding Judge.

Rule 326. Forms

Forms A, B, and C are applicable in civil matters when the parties consent to an assignment of the case to a magistrate. Form D is applicable when a judge requests the designation of a magistrate to hear a matter.

FORM A. NOTICE OF AVAILABILITY OF MAGISTRATE

1. A magistrate is available pursuant to 4 V.I.C. §123(d) to conduct proceedings in this case, including jury and non-jury civil matters, upon the consent of all parties and approval of the Presiding Judge, which may be withheld in his discretion.
2. You may withhold your consent without adverse substantive consequences. The identity of any party consenting or withholding consent will not be disclosed to the judge to whom the case is assigned or to any magistrate.
3. If a magistrate does hear your case, you may appeal directly to the Supreme Court of the Virgin Islands as you would if a judge heard your case.

A form called "Consent to an Assignment to a Magistrate" is available from the office of the Clerk of the Court.

FORM B. CONSENT TO AN ASSIGNMENT TO A MAGISTRATE

_____ v. _____
Civ. No. _____

I voluntarily consent to have a Magistrate of the Superior Court conduct all further proceedings in this case, including a trial, and order the entry of final judgment. (Return this form to the Clerk of the Court; not to a judge or magistrate of the Superior Court.)

Date

Signature of Party

FORM C. ORDER OF ASSIGNMENT TO A MAGISTRATE

_____ v. _____
Civ. No. _____

In accordance with 4 V.I.C. §123(d), and the parties having submitted written consent hereto, it is hereby

ORDERED, that this case is assigned to Superior Court Magistrate _____, _____ District, to conduct all proceedings and enter a final judgment.

Date

Presiding Judge

ATTEST:

Clerk of Court

BY: _____
Court Clerk

FORM D. REQUEST FOR DESIGNATION OF MAGISTRATE

_____ v. _____
Case No. _____

Pursuant to 4 V.I.C. §123(b)(1) and (2), I hereby request that a Magistrate of the Superior Court be designated as follows. Please check the appropriate line.

_____ (A) To hear and determine the following pretrial matter.

_____ (B) To conduct hearings and submit proposed findings of fact and make recommendations for the disposition by a Superior Court judge of any motion of applications of post trial relief made by individuals convicted of criminal offenses.

_____ (C) To conduct hearings and submit proposed findings of fact and recommendations for the disposition by a Superior Court judge of any motion of prisoner petitions challenging conditions of confinement.

NOTE: Pursuant to 4 V.I.C. §123(b)(1) and (2), a magistrate can not be designated to hear a motion for injunctive relief, for judgment on the pleadings, for summary judgment, for dismissing or quashing an indictment or information made by the defendant, suppression of evidence in a criminal case, dismissal or to permit maintenance of a class action, dismissal for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action.

Date

Judge of the Superior Court

DATE: _____

Presiding Judge

TO BE COMPLETED BY CLERK OF THE COURT

Designated Magistrate: _____

Date: _____ Signature: _____