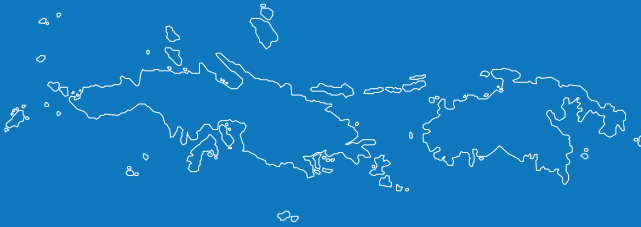


FULL COURT PRESS

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# VIRGIN ISLANDS COURT RULES 2020-2021

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Edited by  
ANTHONY M. CIOLLI

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# **Virgin Islands Court Rules**

**Anthony M. Ciolli**

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The front cover features a map of the Virgin Islands courtesy of <http://freevectormaps.com>.

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## PREFACE TO THE 2020–2021 EDITION

From the initial transfer from Denmark to the United States in 1917 all the way to the present, the U.S. Virgin Islands has strived for—and successfully achieved—substantial autonomy and control over its own internal affairs. The Virgin Islands Judiciary was the last of the three branches of the Government of the Virgin Islands to achieve this autonomy. For much of the Territory’s history, Virgin Islands law was definitively determined by federal judges rather than Virgin Islands judges. During this period, appeals from the local courts were taken to the United States District Court of the Virgin Islands and the United States Court of Appeals for the Third Circuit. In fact, the United States District Court even exercised rule-making authority over the local trial court and mandated that practice in the local court be consistent with that in the federal court.

Over the course of the last several decades, the Virgin Islands Judiciary has now fully transformed into a modern judicial system. With minor exceptions, the Superior Court of the Virgin Islands now exercises original jurisdiction over virtually all local matters, similar to that of a state court of general jurisdiction. Since January 29, 2007, the Supreme Court of the Virgin Islands has exercised appellate jurisdiction over the Superior Court, ensuring that Virgin Islands law is definitively interpreted by Virgin Islands jurists nominated by the Virgin Islands Governor and confirmed by the Virgin Islands Legislature. And due to the signing of Public Law 112-226 on December 28, 2012, the Virgin Islands Supreme Court shares the same relationship with the Supreme Court of the United States as that of the courts of last resort of the fifty states, the District of Columbia, Puerto Rico, Guam, and the Northern Mariana Islands.

After the administrative unification of the Virgin Islands Judiciary upon the signing of Act No. 7888 on July 30, 2016, the Supreme Court of the Virgin Islands, with the assistance of its Advisory Committee on Rules and the input of the Judicial Management Advisory Council, began a multi-year project to reexamine all of the rules of practice and procedure for the courts of the Virgin Islands. This project—which remains ongoing—has so far resulted in the adoption of the Virgin Islands Rules of Civil Procedure, the Virgin Islands Rules of Criminal Procedure, the Virgin Islands Rules of Evidence, the Virgin Islands Small Claims Rules, the Virgin Islands Habeas Corpus Rules, the Virgin Islands Rules of Family Division Procedure, and the Virgin Islands Rules of Probate and Fiduciary Procedure. While some of these rules are modeled after their federal counterparts, many are original creations specifically tailored to address the unique aspects of Virgin Islands practice.

The purpose of this book is to serve as the authoritative guide to the rules of practice and procedure in the courts of the Virgin Islands. The book has been designed with practitioners in mind, with rules expected to be used on a day-to-day basis—such as the rules of civil procedure and criminal division—placed toward the front of the book, while administrative and similar rules that practitioners are unlikely to encounter placed in the back of the book. In addition, the book contains several miscellaneous or uncodified policies and procedures utilized by both the Supreme Court and the Superior Court, some of which are being published in print form for the first time.

To ensure accuracy, each set of rules has been cross-referenced with every promulgation order of the Supreme Court, from S. Ct. Prom. No. 2006-0001 to the most recent order as of the date of publication, and the relevant amendment history of each rule is outlined. The original commentary by the Advisory Committee on Rules has been preserved except when superseded by subsequent rule amendments, and when necessary has been supplemented with author commentary. Case notes highlighting binding authority from the Supreme Court of the Virgin Islands, or which demonstrate an unresolved split among the judges of the Superior Court of the Virgin Islands, have also been included.

To my wife Dana, my son Ethan, and my daughter Eliza, thank you for your unconditional love and support. I would also like to acknowledge the contributions of those individuals who brought

the need for this book to the attention of the Virgin Islands Bar Association, and especially J. Russell B. Pate, Esq., and Joseph T. Gasper, Esq., for the valuable feedback they provided throughout the drafting process. I also would like to thank Fastcase for their sustained support of the Virgin Islands Bar Association, and for making this book available to the Virgin Islands legal community. Finally, although at the time of this writing I was employed by the Judicial Branch of the Virgin Islands, my employer was not involved in its production, and all original work (and any errors therein) is my own and should not be attributed to the courts.

ANTHONY M. CIOLLI, ESQ.

## About the Publisher

This new edition of the Virgin Island Court Rules is published by Full Court Press, an arm of Fastcase Legal Research. Fastcase and the Virgin Islands Bar Association have a longstanding relationship, with the shared goal of bringing free and low-cost legal research to all members of the Association.

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# VIRGIN ISLANDS RULES OF CIVIL PROCEDURE

Originally Effective: March 31, 2017  
*(S. Ct. Prom. No. 2017-0001)*  
Last Amended: January 1, 2021  
*(S. Ct. Prom. No. 2020-0005)*

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## **REPORT OF THE ADVISORY COMMITTEE ON RULES ON THE VIRGIN ISLANDS RULES OF CIVIL PROCEDURE**

The accompanying Virgin Islands Rules of Civil Procedure have been prepared by the Advisory Committee on Rules. The Chief Justice of the Virgin Islands, the Honorable Rhys S. Hodge, has established this Committee pursuant to Act No. 7888 as enacted in 2016, title 4, section 32(f) of the Virgin Islands Code, and other provisions in Virgin Islands law, and has given directions and guidance for its work.

The Advisory Committee on Rules is Chaired by Judge Denise Francois, and is made up of the following members:

Judge Robert A. Molloy  
Judge Debra S. Watlington  
Judge Jessica Gallivan  
Andrew L. Capdeville, Esquire  
Douglas L. Capdeville, Esquire  
Joel H. Holt, Esquire  
Robert L. King, Esquire  
Treston E. Moore, Esquire  
J. Russell Pate, Esquire  
Lee J. Rohn, Esquire  
Judge Denise M. Francois, Chair

Professor Kent Sinclair, an experienced Law Professor who has written and taught extensively on evidence and civil procedure rules for four decades, serves as Project Reporter to support the work of the Committee in reviewing draft rules, considering alternatives, editing and updating materials, and preparing notes to accompany the Rules. Staff assigned by the Supreme Court to assist the Advisory Committee includes Anthony M. Ciolli, Esq., Paul Gimenez, Esq., Brett D. Shields, Esq., and Ms. Angela Williams.

The Virgin Islands Rules of Civil Procedure, which upon promulgation will replace the prior Superior Court Rules in accord with Act 7888, have been created after detailed consideration of the operation of the existing provisions in those prior rules, as well as federal rules that have applied in several areas of practice and procedure which the Virgin Islands Superior Court rules have not addressed.

The “model” for the numbering scheme in the Virgin Islands Rules of Civil Procedure matches that of the Federal Rules of Civil Procedure, although most of the Virgin Islands Rules are worded specifically to address practice in the Virgin Islands courts. Many American courts, including those of a large majority of states and the District of Columbia, have found it advantageous to follow the numbering pattern of the federal rules, which allows experience and treatises dealing with those National provisions to help interpret and apply the locally specific implementation of similar principles.

In the process of drafting the Virgin Islands Rules of Civil Procedure the Advisory Committee on Rules has been working from:

- the Superior Court’s Civil Rules as they have existed in recent years, discussed in decisions by the Superior Court as well as the Supreme Court of the Virgin Islands on many occasions.
- suggestions for modernization of those rules prepared as a set of proposed “Revised Rules of the Superior Court” after six months of work in the fall of 2015 and the early months of 2016 by a committee comprised of Judge Denise M. Francois; Judge Adam G. Christian; Joseph Gasper, Esq.; Carolyn Wlodarczyk, Esq. (law clerk to Judge Michael C. Dunston); Aysha Gregory, Esq. (law clerk to Judge Francois); and Brett D. Shields, Esq. (law clerk to Judge Francois). This Committee worked from approximately September of 2015 through February of 2016.
- the Federal Rules of Civil Procedure, in effect since 1939 and applied by the Courts of the Virgin Islands in many instances over the years when Virgin Islands rules have not controlled. Proposals for adaptation of many of these federal provisions—to better fit the needs and practices of the Virgin Islands—were made by the committee studying possible Revised Rules of the Superior Court, and these proposals have been combined with other needed editorial changes as the pending Virgin Islands Rules of Civil Procedure has taken shape during the summer and fall of 2016 under the guidance of the Advisory Committee on Rules appointed by the Chief Justice for that purpose.

The Virgin Islands Rules of Civil Procedure incorporate and adapt most of the existing federal rules—to the extent applicable in Virgin Islands practice—replacing them with Virgin Islands-specific versions that are tailored to local needs and practices. The federal numbering system will be followed, even though the wording of each provision has been specifically tailored for Virgin Islands courts. Thus, for example, Federal Civil Rule 4 deals with service of process, and Rule 4 of the Virgin Islands Rules of Civil Procedure addresses that same topic. While some of the Rule 4 provisions are similar to those in federal practice, the large majority of the provisions in Rule 4 of the Virgin Islands Rule of Civil Procedure are specific to the structure of government, existing statutes, and practice needs of the Virgin Islands.

Where the prior Superior Court Rules have addressed topics that are not covered in the federal-style rules of practice—often in a more detailed or practical fashion to guide the Bench and Bar—the Advisory Committee on Rules has organized those Virgin Islands-specific provisions that will be continued, using a unified numbering system keeping related provisions together in the resulting body of rules. Thus Rule 4 of the Virgin Islands Rules of Civil Procedure will deal with service of process, and “Rule 4.1” will address service by publication, a topic that is not covered in the standard service of process provisions in the federal system, but which has heretofore been

the subject of Superior Court rules and is controlled by specific Virgin Islands statutes. Of course, much of Virgin Islands civil practice is regulated by statutes, and—where feasible—the wording of the new Virgin Islands Rules of Civil Procedure makes reference to the governing statutes, either in the text of the Rules as cross-references, or in short “drafting notes” that accompany the initial set of the Rules of Civil Procedure.

Upon promulgation of the Virgin Islands Civil Procedure by order of the Supreme Court, the Superior Court civil rules will be superseded, and recourse to the federal rules governing civil procedure will no longer be needed.

**Moving Forward.** The Advisory Committee on Rules will hold regularly scheduled meetings each year to review needed Rules provisions and changes. It is expected that criminal procedure rules and other specific topics will be addressed in rules proposals in 2017 and future years. In accord with Act 7888, membership on the Advisory Committee is by appointment of the Chief Justice, and members are appointed in rotating terms of years, helping to assure participation in the deliberative process by a diverse and changing representative body from all areas of Virgin Islands practice. Any lawyer or judge who wishes to propose the need for a new rule, or for revision of any existing rule promulgated by the Supreme Court, will be invited to send such suggestions, complaints, or comments, to the Chair of the Advisory Committee on Rules or to its Reporter, Professor Sinclair.

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*Author's Note*

The Report of the Advisory Committee on Rules, dated January 11, 2017, accompanied the initial release of the Virgin Islands Rules of Civil Procedure for public comment. See S. Ct. Prom. No. 2017-0001 (V.I. Jan. 18, 2017). While not formally a part of the Rules, the committee report and accompanying reporter’s notes are included herein because the Supreme Court of the Virgin Islands has relied on these materials to determine the intent of a given provision. *Mills-Williams v. Mapp*, 67 V.I. 574 (V.I. 2017).

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**Rule 1. Scope and Purpose**

These rules govern the practice and procedure in all civil actions and proceedings in the Superior Court of the Virgin Islands (the “Superior Court” or the “court”), except as otherwise stated in these rules, or other rules promulgated by the Supreme Court, and except as otherwise provided by law. These rules should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.

---

*Reporter's Note*

The Advisory Committee contemplates that additional groups of rules of court will be adopted by the Supreme Court dealing with particular categories of proceedings, such as small claims cases, landlord-tenant proceedings, and family cases. The language of Rule 1 is intended to provide a general statement that the present Rules apply to Superior Court proceedings and to indicate that more specialized rules may apply in the future to certain categories of actions.

---

**Rule 1.1. Title and Application**

**(a) Title and Citation.** These rules shall be known as the Virgin Islands Rules of Civil Procedure and may be cited in short-form as V.I. R. Civ. P.

**(b) Effective Date.** These rules shall take effect as provided in a promulgation order by the Supreme Court of the Virgin Islands.

**(c) Application to Pending Proceedings.** These rules, and subsequent amendments, govern:

- (1)** proceedings in any action commenced after their effective date; and
- (2)** proceedings in any action pending on the effective date of the rules or amendments, unless:
  - (A)** the Supreme Court of the Virgin Islands specifies otherwise by order; or
  - (B)** the Superior Court makes an express finding that applying them in a particular previously pending action would be infeasible or would work an injustice.

---

#### *Reporter's Note*

Under this Rule the V.I. R. Civ. P. will take effect as provided in a Promulgation Order by the Supreme Court, and will apply to all actions commenced after their effective date. Importantly, under subpart (c) of this Rule they will apply to all actions that are pending on the date the Rules become effective unless a Superior Court judge makes a specific finding that applying them in a particular previously pending litigation would be “infeasible” or would “work an injustice.” It is anticipated that having an express ruling that prior rules or practices will be applicable will provide clear guidance to counsel and parties in such previously pending cases. If no ruling is made, under this Rule 1.1 the Rules of Civil Procedure will apply to actions filed before adoption of the Rules.

#### *Case Note*

Virgin Islands Civil Procedure Rule 1.1(c), permitting the Virgin Islands Rules of Civil Procedure to apply to pending cases in the Superior Court when doing so would not be infeasible or work an injustice, does not extend to cases that were appealed to the Supreme Court of the Virgin Islands before the Virgin Islands Rules of Civil Procedure went into effect. *Mills-Williams v. Mapp*, 67 V.I. 574 (V.I. 2017).

The Superior Court committed no error when it exercised its discretion to invoke Virgin Islands Rule of Civil Procedure 1.1(c)(2)(B) to apply the former Superior Court Rules to a matter that had been fully briefed by the parties prior to the effective date of the Virgin Islands Rules of Civil Procedure. *Kazi v. Colonial Pacific Leasing Corp.*, 69 V.I. 903 (V.I. 2018).

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### **Rule 1.2. Definitions; References to Judges and Magistrate Judges**

**(a) Definitions.** In these Rules of Civil Procedure,

- “Party” or “Plaintiff” or “Defendant” refers to a represented party acting by counsel, and to any self-represented party, as the context requires.
- “Judge” refers to a sitting judicial officer appointed by the Governor with the advice and consent of the Legislature in accordance with 4 V.I.C. § 72(a) or appointed or designated pursuant to other statutory authority.
- “Magistrate Judge” refers to a sitting judicial officer appointed by the Presiding Judge in accordance with 4 V.I.C. § 122(a) or other statutory authority.
- “Presiding judicial officer” refers to a judge or magistrate judge.
- “Virgin Islands” refers to the United States Virgin Islands.



**(b) Magistrate Judge Authority.** Wherever the word “judge” appears in these Civil Rules, the authority and functions specified may be exercised by a magistrate judge to the extent not otherwise inconsistent with these rules, case law precedent, or any applicable statute.

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*Reporter’s Note*

Subpart (a) of this Rule is intended to provide that the definition of “Judge” in the V.I. R.Civ.P. will include senior or retired judges to the extent they are appointed or designated to sit under any provision of Virgin Islands law.

Subpart (b) of the Rule takes cognizance of the fact that Act No. 7888 changed the designation of “magistrate” to “magistrate judge.”

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**Rule 1.3. Procedure in the Absence of Controlling Rule or Virgin Islands Law**

**(a) Generally.** When procedure is not prescribed by these Virgin Islands Rules of Civil Procedure, precedent from the Supreme Court of the Virgin Islands, or the Virgin Islands Code, a judge may regulate practice in any manner consistent with law of the Virgin Islands.

**(b) Violation of Requirements Not Specified in these Rules or Applicable Law.** No sanction, penalty or other disadvantage may be imposed for noncompliance with any requirement that is not specified in these Civil Rules, the Virgin Islands Code, or in the law of the Virgin Islands, unless the Superior Court has issued an order providing the parties in the action with actual notice of the requirement.

---

*Reporter’s Note*

Subpart (a): This Rule recognizes that—where specific guidance or requirements are not provided in the Rules of Civil Procedure, precedent from the Supreme Court of the Virgin Islands will be applicable, along with any provisions of the Virgin Islands Code. Absent such controlling law on procedures to be followed, this Rule confirms that a judge may regulate practice in any manner consistent with law of the Virgin Islands.

Subpart (b): This portion of Rule 1.3 is intended to address those situations where—due to the absence of controlling statutes, Rules, or Supreme Court precedent—there is no prescribed mode of proceeding, and a judge of the Superior Court simply makes an order imposing requirements, that ruling will not be a basis for sanctions or other penalties unless the parties were given notice of the requirements by the issuance of an order providing actual notice of the requirement.

*Case Note*

Virgin Islands Rule of Civil Procedure 1.3(b) codifies the constitutional maximum that before a court can impose the sanction of civil or criminal contempt, it must provide the alleged offender the safeguards of notice and an opportunity to be heard. *In re People of the V.I.*, 60 V.I. 769 (V.I. 2018).

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**Rule 2. One Form of Action**

There is one form of action—the civil action.

Published for the first time under Full Court Press, this new collection of the Virgin Islands Court Rules contains helpful annotations penned by Anthony M. Ciolli, a local attorney who has served as President of the Virgin Islands Bar Association. This helpful reference for litigators contains the full text of each set of rules with cross-references to Supreme Court promulgation orders. Original commentary by the Advisory Committee on Rules is also included, plus relevant case notes.

