

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

IN RE:
ORDER AMENDING THE RULES GOVERNING
REVIEW OF MAGISTRATE DECISIONS

CASE NO. SX-10-MC-30

ACTION FOR:

NOTICE
OF
ENTRY OF JUDGMENT/ORDER

TO: JUDGES OF THE SUPERIOR COURT Esquire
~~MAGISTRATES OF THE SUPERIOR COURT~~
QUEEN TERRY, Esquire
VIRGIN ISLANDS BAR ASSOCIATION
VENETIA H. VELAZQUEZ Esquire

JUSTICES OF THE SUPREME COURT
INFORMATION TECHNOLOGY
LIBRARY
~~ORDER BOOK~~

Please take notice that on NOVEMBER 23, 210 Order was
entered by this Court in the above-entitled matter.

Dated: NOVEMBER 23, 2010

Venetia H. Velazquez, Esq.

Clerk of the Superior Court



By: JUDITH M. WARD-HALL

COURT CLERK SUPERVISOR

**Preface to Rule 322 Governing Reviews in the Magistrate Division of the
Superior Court of the Virgin Islands, As Amended By Order Entered
November 23, 2010**

Pursuant to Act No. 6919, enacted on April 11, 2007 and codified in V.I. Code Ann., tit. 4, § 120 *et. seq.*, the Magistrate Division of the Superior Court was established. That statute further authorized the Superior Court to promulgate rules and amendments to the Rules of the Superior Court, as necessary, to implement the Magistrate Division. See 4 V.I.C. § 126.

In implementing the statute affecting the Magistrate Division, the Legislature of the Virgin Islands expressly set forth the jurisdiction and scope of authority of magistrates of the Court as follows:

- 1) **Original Jurisdiction:** Pursuant to 4 V.I.C. §§ 123 (a) and 124(b), magistrates of the Court were provided with original jurisdiction over the several enumerated matters, to include criminal misdemeanor non-jury matters where the punishment does not exceed six months imprisonment; marriage ceremonies; non-felony traffic offenses, litter cases, small claims cases, probate matters; temporary and permanent restraining orders in domestic violence cases, forcible entry and detainer and landlord-tenant actions.
- 2) **Designation:** Pursuant to 4 V.I.C. § 123 (b), magistrates were given authority to hear certain pretrial matters and conduct hearings that are within the jurisdiction of the judges of the Court, except as provided therein, upon proper designation by a judge and in accordance with rules adopted by the Court.
- 3) **Trial By Consent:** Pursuant to 4 V.I.C. § 123 (d), magistrates were provided authority, on the consent of the parties and the approval of the presiding judge, to conduct trials and enter final judgments in jury or non-jury civil matters.

Having set forth these three distinct sources of magistrates' authority, the Legislature provided for a direct right of appeal to the Supreme Court of the Virgin Islands, from judgments entered by magistrates while presiding over trials by consent, pursuant to 4 V.I.C. § 123 (d). Moreover, the Legislature expressly created a right to reconsideration by a Superior Court judge of pretrial matters heard by designation under 4 V.I.C. § 123 (b). However, the Legislature did not expressly set forth an appellate remedy for litigants who seek to challenge a decision entered pursuant to magistrates' original jurisdiction under 4 V.I.C. § 123 (a)(1) – (6).

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This 23 day of Nov. 20 10
VENETA H. VELAZQUEZ, ESQ.
CLERK OF THE COURT
BY [Signature] Court Clerk I

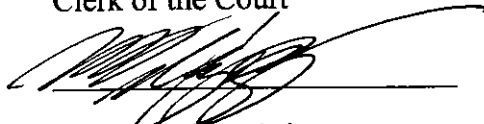
While declining to set forth specifically a procedure for litigants seeking review from magistrate decisions entered in original proceedings under 4 V.I.C. § 123 (a), the Legislature nonetheless contemplated other avenues of review “in the Superior Court or to the Supreme Court, if appealable to the Supreme Court as provided by law,” pursuant to this Court’s rulemaking authority. See 4 V.I.C. § 125. The Supreme Court of the Virgin Islands has construed the absence of a specific statutory appellate remedy to preclude direct review of magistrate decisions in that Court and to require an internal review process for all magistrate decisions in the trial court, see *H&H Avionics, Inc. V. Virgin Islands Port Authority*, S. Ct. Civ. No. 2009-096 (V.I. Dec. 14, 2009), thus necessitating the following amendments to the Rules of the Superior Court, of even date, to provide for an internal review process.

ENTERED this 22nd day of November, 2010.



Darryl Dean Donohue, Sr.
Presiding Judge

ATTEST:
Venetia Velazquez, Esq.
Clerk of the Court



Dated: 11-23-2010

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VENETIA H. VILARQUEZ, ESQ.
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By [Signature] Court Clerk I

FOR PUBLICATION

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

**IN RE:)
ORDER AMENDING THE RULES)
GOVERNING REVIEW OF)
MAGISTRATE DECISIONS)**

MISC. NO. JK-10-MC-30

ORDER

WHEREAS this Court previously entered Interim Rules governing internal review of magistrate orders in Super. Ct. Misc. No. 2009-30, and

WHEREAS the Superior Court, in implementing further rule amendments, in Super. Ct. Misc. No. 2009-029, intentionally left blank Rule 322 (rule governing review of magistrate decisions); and

WHEREAS the Court having now resolved to adopt more permanent procedures governing its internal review processes,

IT IS NOW 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 are hereby amended to add the following rules governing "Review of Magistrate Decisions; Appeals" to **Superior Court Rule 322 (and related subsections)**, which was previously left blank. This amendment is effective immediately and supersedes the Interim Rules previously established in Super. Ct. Misc. 30/2009 (entered December 31, 2009).

SO ORDERED this 22nd day of November, 2010.


**DARRYL DEAN DONOHUE, SR.
PRESIDING JUDGE**

ATTEST:


**VENETIA H. VELAZQUEZ, ESQ.
CLERK OF THE COURT**

cc: Judges and Magistrates of the Superior Court
Venetia Velazquez, Esq., Clerk of the Superior Court
Information Technology (for uploading to website)

certified to be a true copy
This 23 day of Nov, 2010
**VENETIA H. VELAZQUEZ, ESQ.
CLERK OF THE COURT**
By C. Adams Court Clerk 7
Justices of the Supreme Court
Virgin Islands Bar (for distribution)
Library (For Publication); Order Book

Rule 322. Review of Magistrate Decisions; Appeals:

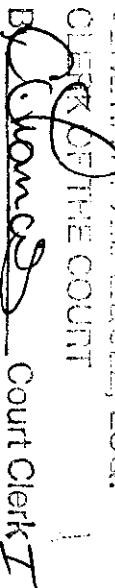
(a) **Appellate Remedy.** Parties seeking to challenge a decision of a magistrate of the Superior Court may obtain review from a trial judge of the Court, as provided herein, unless another appellate remedy is otherwise provided by law.

(b) **Definitions:**

- (1) **Petition for Review:** a paper submitted to the Court requesting an internal appeal or review from a decision of a magistrate.
- (2) **Appeal:** references to “appeal(s)” refer to appeals from the decisions of trial judges to the Supreme Court of the Virgin Islands, or to another appropriate appellate forum.
- (3) **Petitioner:** The litigant who initiates a review proceeding, by filing a Petition for Review with the Court. (otherwise known as the “appellant”)
- (4) **Respondent:** The opposing party in a case in which a petition for review has been filed (otherwise known as the “appellee”)
- (5) **Cross-Petitioner (Cross-Appellant):** a respondent who, in response to an appeal, also raises independent challenges and seeks review of those issues from the Court.
- (6) **Trial Judge:** A judge appointed by the Governor with the advice and consent of the Senate, in accordance with statutory law.
- (7) **Magistrate:** A judicial officer appointed by the Presiding Judge of the Superior Court, with the advice of a selection panel and the other sitting judges of the Court, in accordance with Virgin Islands law.
- (8) **Clerk of the Court:** Clerk of the Court, as used in these rules, refers to the Clerk of the Superior Court, unless otherwise indicated.

(c) **Administration of Reviews and Appeals in the Superior Court**

(1) **Creation of Appellate Division:** Pursuant to V.I. Code Ann. tit. 4, § 79(a) and § 31(d) (3) and (5), there is hereby created an Appellate Division of the Superior Court, within the Office of the Clerk. The Appellate Division shall be responsible for administering all appeals and reviews filed in the Court, managing the appellate dockets, and ensuring the timely processing and assignment of all

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CLERK OF THE COURT
By  Court Clerk I

internal petitions for review filed with the Court, processing of all appeals to the Supreme Court of the Virgin Islands and any other appellate forum established by law, and processing and managing all petitions for writs of review from the decisions of administrative agencies.

(2) Staffing: A judicial law clerk appointed by the Presiding Judge and an Appellate Court Clerk (Court Clerk III) in each division of the Court shall comprise the Appellate Division of the Court. Additionally, there shall be appointed, by the Presiding Judge, a Staff Attorney who shall oversee the Court's appellate processes territorywide.

(3) Duties:

(A) Staff Attorney


The Staff Attorney serves as the immediate supervisor of the legal staff of the Appellate Division and has primary administrative responsibility for processing and tracking all Superior Court appeals, internal reviews and writs of reviews. The staff attorney also provides supervision in the preparation legal memoranda by Appellate Law Clerks and reviews their work for legal sufficiency, accuracy and form prior to submission to the appropriate judge.

The Staff Attorney additionally works with the Clerk to develop a continuing program for appellate case management and for improving the timely delivery of service to the public.

(B) Appellate Law Clerks:

Appellate law clerks work under the direct supervision of the Appellate Division Staff Attorney in the completion of day to day matters to ensure the proper processing of appeals and reviews. Such law clerks shall assist the Court in the consideration of all appeals and reviews. Their duties include the following:

- (i) Preparation of memoranda of law and fact on the merits, as well as recommendations as to dispositions, on all assigned petitions for review, appeals and writs of review.
- (ii) Screening all petitions for reviews and petitions for writs of review filed in the respective Division for jurisdictional defects; tracking and processing all appeals/reviews in the respective Division; communicating with counsel and assigned judges to facilitate the swift determination of applicable cases and to facilitate the proper preparation of cases prior to submission to

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VENERABLE H. YVEL AZQUEZ, ESQ.
CLERK OF THE COURT
BY  Court Clerk I

judges, assisting the Clerk in distributing and coordinating motions and other filings to be decided by judges; assisting the Clerk in coordinating, tracking and processing all procedural motions that aid in moving the case(s) forward; assisting assigned judges in disposing of motions filed in the cases; and assisting in the drafting of opinions and orders;

(iii) Processing and monitoring all *pro se* matters filed in the Court, including assisting the Clerk in answering all prisoner and *pro se* mail addressed to the Court, in corresponding with *pro se* litigants to ensure compliance with the rules of the Court, the proper filing and motion practice procedures, and in directing entry of appropriate records in the Clerk's office;

(iv) Assisting in a wide variety of miscellaneous matters, including working with an assigned judge, and his/her chambers, when requested by the judge in connection with the resolution of reviews.

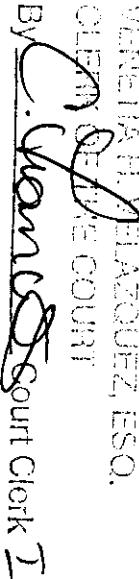
(v) Appellate Law Clerks work closely with the judges of the Court and the Clerk of the Court in providing development of a program for appropriate support to the Court.

(C) Appellate Court Clerks (Court Clerk III)

Appellate Court Clerks are primarily responsible for case intake and case processing, in accordance with the operating procedures established by the Clerk of the Court and approved by the Presiding Judge. As part of their responsibilities in that regard, Appellate Court Clerks bear primary responsibility for timely processing all notices of appeal to the Supreme Court, forwarding all submissions required by rule or law to the Supreme Court after the filing of notices of appeal, timely processing of all petitions for review, and assistance to *pro se* litigants in conjunction with such reviews.

322.1 . Review of Cases Under Magistrates' Original Jurisdiction

(a) **Reviewable Orders/Judgments:** Final orders or judgments of magistrates resolving completely the merits of cases which came before them pursuant to their original jurisdiction, as provided by 4 V.I.C. § 123(a), are immediately reviewable by judges of the Superior Court of the Virgin Islands. Original matters reviewable under this rule are: Small Claims; Forcible Entry and Detainer and Landlord-Tenant actions; Criminal Bench Trials (for 6-month

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CLERK OF THE COURT
By:  Court Clerk I

misdemeanors); Domestic Violence; Non-felony Traffic offenses; Probate cases; Litter and Conservation offenses.

(b) How Obtained: Review of magistrate decisions under this rule may be obtained by: 1) filing of a Motion or Petition for Review with the Clerk of the Court; 2) by the Court, acting *sua sponte*.

(1) Form and Content of Notice or Petition for Review:

(A) Review from a magistrate's decision may be obtained by filing a Petition for Review with the Clerk of the Superior Court. The petition for review shall specify the party/parties seeking review and shall designate the magistrate decision or order appealed from and the issues presented for review. Such paper or petition must include a certificate evidencing service on the opposing party/parties.

(B) Notwithstanding this rule or any other rule stated herein, the Clerk shall accept any paper or notice filed after the decision of a magistrate and shall deem the same to be a petition for review, despite its form, title, or its informality, so long as the substance evidences an intent to appeal a magistrate decision.

(C) No petition for review shall be dismissed merely because of its form, title or informality.

(D) Nothing in these rules is intended to remove the right of a magistrate to entertain a timely filed motion for reconsideration of its order in the first instance, pursuant to applicable local or federal rules of civil procedure. Such motion must clearly evidence the movant's intent to seek reconsideration from the magistrate. If the magistrate acts on a motion to reconsider an order, the time for filing a petition for review will then be ten (10) days from the date of the order denying or granting the motion for reconsideration.

(E) The Court may, *sua sponte*, construe a motion styled as one for reconsideration of a magistrate's decision as a petition for review, where the substance of the motion evidences an intent to obtain such review, consistent with subsection (2) of this rule.

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10/27/10
CLERK OF THE COURT
C. Daniels
COURT CLERK

(2) Time for Seeking Review:

(A) Petitions for review under this section must be filed with the Clerk of the Court within ten (10) days after entry of the order sought to be reviewed, and a copy served on the opposing party. The Clerk shall promptly assign to the appropriate judge for review in accordance with the internal rotational schedule adopted by the Court. Following such assignment, the Clerk shall forward the case to the Staff Attorney for processing and case management.

(B) The time for filing a petition for review may not be extended. A petitioner who fails to seek review within the time provided by these rules waives the right to file an objection to the magistrate order.

(C) Where a petition for review is filed after an oral decision but before entry of a written order or judgment, it is deemed filed as of the date of the written order or judgment appealed from.

(3) Service of Petition for Review: A petitioner seeking review of a magistrate decision must file the original Petition with the Court and a date stamped copy on opposing party/parties and on the magistrate who entered the decision for which review is sought. Such service must be evidenced by a certificate of service attached to the petition for review. The Clerk shall note in the docket the names of all parties to whom notice of the petition was served, and the date of such service, as noted on the certificate of service submitted by the petitioner.

(4) Filing Fee: All petitions for review under this provision must be accompanied by a filing fee of Fifty Dollars (\$50.00). The fact of payment must be entered onto the docket. No review may be submitted to a judge for consideration, or decided, unless payment of the filing fee is made in accordance with these rules.

(A) Payment of Filing Fees. All petitions for review must be accompanied by the appropriate filing fee, unless permission has been granted to proceed *in forma pauperis* ("IFP"). If a petition for review is docketed without prepayment of the applicable fee, the petitioner shall pay the fee within five (5) days after docketing of the petition. In the event the petitioner fails to submit payment within the time set forth in these rules, and has not filed a motion

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This copy of Nov. 2010
MAGISTRATE REVIEW PROCEDURES
ORDER OF THE COURT
By *C. James* Court Clerk I

and appropriate supporting documents to proceed IFP, the petition for review may be dismissed for failure to prosecute, without further notice to the petitioner.

(B) Petition to Proceed *In Forma Pauperis*: A party who desires to obtain review and who is unable to pay the fees associated with a review may file a motion for leave to proceed IFP, in accordance with 4 V.I.C. § 513. Motions to proceed IFP shall be determined by the trial judge assigned to review the magistrate decision. IFP status will continue in a review proceeding if the petitioner has been permitted to proceed in the underlying action as one who is financially unable to obtain adequate defense. A judge of the Superior Court may deny continuation of IFP status if it is determined that the petition for review is not taken in good faith or if it finds that the party is not entitled to IFP status.

(C) Cross-claims: After filing of a petition for review, the respondent who is a party to that review may file a cross-appeal within the same action as the petition for review. A fee of \$50 shall be assessed for all cross-appeals. However, such cross appeals shall be consolidated and considered with the underlying petition for review.

(c)- Effect of Failure to Seek Review: All Magistrate orders for which no internal review is sought by either party within the time provided for by this section become final orders of the Court after expiration of the time for such filing and shall result in closure of the case. Parties who fail to request internal review for a magistrate order thereby waive their right to later object or appeal such order.

(d) Assignment and Consideration of Reviews: Petitions for Review of magistrate decisions are assigned to trial judges, excluding Family Court judges, based on the rotational schedule of the Court. However, magistrate decisions in domestic violence and probate cases shall be assigned exclusively to the Family Court judge in the respective district for consideration.

(e) Authority for Subsequent Orders. A magistrate whose order is being challenged on review may not enter any subsequent order in the case after a petition for review is filed, except as follows:

ORIGINAL TO CLERK
THIS DAY OF Nov. 2010
VENETA H. VILLARQUIZ, EGO.
CLERK OF THE COURT
By *Chancel* Court Clerk I

- (1) A magistrate may, following a petition for review, enter a written opinion or order elucidating or memorializing an oral order.
- (2) A magistrate may, immediately upon receiving notice of the filing of a petition for review, enter an order setting an Appeal Bond in accordance with these rules.
- (3) Motion for Reconsideration Or Motion to Set Aside. A magistrate may consider a motion to set aside a judgment, pursuant to Fed. R. Civ. P. 59(e) or a motion for reconsideration filed within ten (10) days after entry of the order for which review is sought. A magistrate may enter an order resolving such motion for reconsideration, if such order is entered within twenty (20) days after filing of the motion with the Court. Where a magistrate enters an order granting or denying a motion for reconsideration, the magistrate must promptly submit notice of the same, addressed to the judge assigned to conduct the review. Such notice must be entered onto the case docket and a copy filed in the case.
- (4) The magistrate may enter an order granting or denying a motion for stay, if otherwise permitted by these rules or by law.
- (5) The magistrate, in all other circumstances, has no jurisdiction to act on any matter in the case, or to enter any order, after the filing of a petition for review.

(f) Effect of Notice of Filing of Subsequent Motion or Order .

(1) Motions. A party filing a motion to set aside judgment, motion for reconsideration by a magistrate, or a motion to stay, stays the time for the filing of a petition for review until ten (10) days after resolution of such motion.

(2) Duty to Notify. Where a petition for review has been previously filed, a party filing a subsequent motion for consideration by a magistrate,

VERNETTA H. WILLAZANZUEZ, ESQ.
CLERK OF THE COURT
23 day of Nov. 2010
B. Chaves Court Clerk

as permitted under these rules, has a duty to notify the trial judge, by written notice, of the filing of such motion. The Clerk also has a duty to notify the assigned judge of the filing of such motion.

(3) Orders. If an order is entered in the case after filing of a petition for review, the magistrate whose order is being challenged has a duty to promptly notify, in writing, the trial judge conducting the review of any subsequent orders or the filing of any subsequent motions

(g) Motions; Number of Copies.

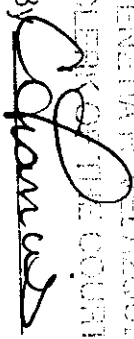
(1) Number of Copies. Three date-stamped copies (one original and two copies) of all motions are to be filed in the Court in all matters in which a petition for review has been filed. The Clerk shall distribute the motions as follows: the original is entered into the official record; the remaining copies are to be distributed to the staff attorney and the judge designated to review the matter.

(2) Service. All motions must be served on opposing party(ies), as evidenced by a certificate of service appended thereto.

(3) Response. Any party may file a response in opposition to a motion within ten (10) days after service of the motion, unless a different time period is prescribed by these rules. Notwithstanding the time for response provided, the Court may, at any time, rule on a motion for procedural orders, including extensions of time, without awaiting a response thereto.

(4) Content of Motions. All motions must clearly set forth the relief requested and include, as attachments, all supporting documentation in support of the motion. A proposed order shall accompany all motions, which include a distribution list of all attorneys or *pro se* parties.

(5) Motions Decided by the Clerk. The Clerk may entertain and dispose of specified types of procedural motions which are ministerial in nature, relate to the preparation or printing of briefs on review, compliance with deadlines and rules of the Court, to include dismissals for failure to prosecute, or relate to calendar control, to include motions for extensions of time. If application is promptly made by any party adversely affected by the action of the Clerk, such action may be reconsidered, vacated, or modified by the trial judge assigned to consider the review petition.

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VENETIAH DELAZOUEZ, ESQ.
CLERK OF THE COURT
By  Court Clerk J

(h) The Record on Review:

(1) What Constitutes. The original case file, to include all exhibits and evidence taken by a magistrate in consideration of the case, and the transcript of proceedings, if any, shall constitute the record on review.

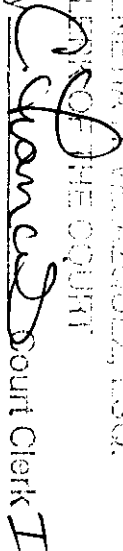
(2) Transcript of Proceedings; Duty of Petitioner to Order.

(A) Request for Transcript. Unless the need for a transcript is waived by the Court, it is the duty of the petitioner in each instance to request a transcript of proceedings upon filing of a petition for review, by completing the "Request for Transcript" ("RFT") form provided by the Court. Financial arrangements for such transcript must be made in accordance with the deadlines provided by the Court. The Petitioner must further submit to the Court, within ten (10) days of filing of the Petition for Review, evidence that he/she has made financial arrangements with the court reporter/transcriber for the transcript. The RFT and notice of financial arrangements shall be entered onto the docket. Upon completion, a certified copy of the transcript shall be submitted to the Court for inclusion into the record and entry onto the docket.

(B) Effect of Failure to Request Transcript. Failure to request the transcript and submit evidence of payment therefor, within ten days (10) after filing of the petition for review, shall be cause for dismissal of the petition for review for failure to prosecute, without any further notice to the petitioner.

(C) Waiver. The transcript requirement may be waived by the Court in appropriate cases, on motion by the petitioner or if a judge determines, *sua sponte*, that the case may be appropriately reviewed and determined based on the case record, the nature of the case, and the state of applicable law.

(D) Duty of Reporter/Transcriber: It is the duty of the court reporter/transcriber to keep the Court advised regarding pending transcripts and to submit a copy of the

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CLERK OF THE COURT
By  Court Clerk I

certified transcript of the proceedings to the Court, after submission to the ordering party. The court reporter/transcriber shall inform the Clerk, in each instance, when financial arrangements are made for transcript.

(E) **Fees.** The fees to be charged for all transcripts from proceedings in the Superior Court are those established by an Order of the Presiding Judge, in accordance with Superior Court Rule 4.

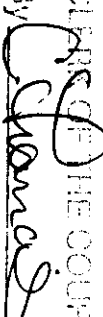
(F) **Duty of the Clerk:** The Clerk shall take all steps necessary to ensure completion of the record in all cases in which a petition for review has been filed. Upon completion of the record, the Clerk shall forward the file, and all supporting documents, as well as a copy of the docket, to the trial judge for consideration of the review. The record is complete, and the review ready for determination, upon the filing of: the opening brief of the petitioner, the responsive brief of the respondent, filing of a certified transcript of the proceedings, unless waiver has been obtained, the resolution of all motions filed, payment of all required fees, and satisfaction of the appeal or supersedeas bond, if any.

(i) Briefs; Filing, Format and Content.

(A) When Due; Briefing Schedule: Upon the filing of a petition for review, the Clerk shall issue notice to the parties regarding the schedule and deadlines for: completion of the record, completion of briefing, payment of docketing fees, request and payment of transcripts.

Unless otherwise ordered by a judge of the Court, the petitioner shall serve and file a brief within fourteen (14) days after submission of the transcript in the case, or after a briefing schedule is issued, whichever comes first. The respondent shall serve and file a responsive brief within ten (10) days after service of the petitioner's brief. The parties' brief shall outline the issues being submitted for review and arguments in support of the petitioner's or respondent's position. A petitioner may file a reply brief only if ordered by the Court.

If a cross-appeal is filed, the petitioner shall, within ten (10) days after service of the respondent's responsive brief, file a responsive brief.

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A respondent filing such cross-appeal may also, by order of the Court, be permitted an opportunity to file a reply brief.

(B) Waiver: A trial judge may, by order, waive the need for briefs or excuse any party from filing briefs without adverse action if the issue presented for review is an issue of law which has previously been determined by controlling law and for which there is no reasonable dispute, and the issues may be determined based on the case record.

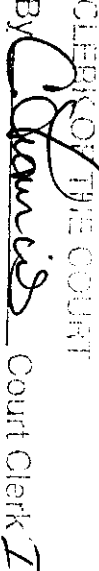
(C) Copies to be filed: Parties shall file three copies of each brief or paper submitted. In addition, one copy must be served on each opposing party.

(D) Format of Briefs. All briefs shall be submitted as follows:

- (i) Typewritten or legibly handwritten on 8.5"x11" paper;
- (ii) Numbered pages and appropriate headings that contain the caption of the case and the case number.
- (iii) A cover sheet shall be attached to all briefs indicating the party identified as the petitioner (the person seeking review) and the party identified as the respondent, and noting the issue(s) presented for review

(E) Content of Briefs: The briefs of the petitioner and respondent shall contain, under appropriate headings, in the order here presented:

- (i) a table of contents, with page references
- (ii) a statement of the issues presented for review or being challenged;
- (iii) a copy of the order being appealed from (or designation of the order by date of entry and nature of order, to permit ready identification in the case file);
- (iv) A statement of the case, which shall first indicate briefly the nature of the case, the course of proceedings, and a statement of the facts relevant to the issues presented for review.
- (v) An argument. The argument shall contain the contentions of the petitioner with respect to the issues presented or challenged, and the reasons

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By  Court Clerk I

supporting such challenge, with citations to the authorities, statutes, and parts of the record relied on.

- (vi) A brief conclusion stating the relief sought.
- (vii) Cross-appeals: if the respondent has filed a cross-appeal, that party's brief shall also contain a statement of the issues presented and shall separately present arguments in the brief in support of his/her positions. In the event of a cross-appeal, the Petitioner (the first litigant filing a petition for review) shall also be afforded ten (10) days to respond to the brief of the respondent.

(F) Caption of Reviews. All briefs or papers filed as part of the petition for review must be captioned in accordance with the original caption of the case. However, for clarity, the Petition for Review and the Briefs submitted shall indicate the position of the parties in the review as Petitioner or Respondent. The clerk shall note the position of the parties on review on the docket. An example of the caption to be used on review is as follows:

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
 DIVISION OF _____

JOHN DOE,)	SX-10-CV-0009
Plaintiff/Respondent,)	
On Review)	
v.)	
)	
JANE DOE,)	
)	
Defendant/Petitioner)	
On Review.)	
_____)	

(G) Consequence of Failure to File Briefs:

- (i) **Petitioner:** Unless waiver has been obtained, if a petitioner fails to file brief within the time provided by these rules, or within the time otherwise established by the Court,

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 His 23 day of Nov, 2010
 JENETRA L. VILLAZQUEZ, ESQ.
 CLERK OF THE COURT
 B. Chambers Court Clerk T

the petition for review may be dismissed for want of prosecution, on motion by the respondent or by the Court, *sua sponte*.

(ii) **Respondent:** If a respondent fails to file a responsive brief within the time provided by these rules, the trial judge shall resolve the petition for review on the record and the arguments submitted by the petitioner, and the respondent shall lose any further opportunity to be heard in the review proceedings.


(j) **Deadlines; Extensions:** All deadlines and computations of time noted in these rules are governed by Superior Court Rule 9. All deadlines are to be strictly construed. Failure to adhere to deadlines set by the Court may result in dismissal for failure to prosecute, without further notice to the party. Extensions of time for filing all documents in a review proceeding, with the exception of the petition for review, are disfavored and may be granted only upon good cause, as determined by the trial judge. Motions for extensions of time must be filed no later than five (3) days before expiration of the time for filing the document.

(k) **Certificate of Service.** All papers submitted to the Court must also be served on the opposing party/parties and notice evidencing such service submitted to the Court.

Rule 322.2. Priority of Criminal Reviews and Bail Decisions; Interlocutory Reviews Permitted.

(a) **Priority.** Reviews in all criminal matters are to be afforded priority over all other reviews. However, all reviews challenging pretrial detention or bail decisions and motions for release pending review by magistrates are to be granted Expedited Review status. Motions for release pending review are to be referred immediately to the judge assigned to review the magistrate decision. The judge may hold a hearing or may, after reasonable notice to the People, promptly determine the motion based on the papers, affidavits and the record submitted.

In all reviews challenging pretrial detention or bail determinations and motions for release, the trial judge shall, where practicable, waive the transcript requirement.

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By:  Court Clerk I

(b) Bail. Bail decisions rendered by a magistrate may be immediately reconsidered, on motion to the assigned judge or the Presiding Judge. The procedure and timelines for the filing of such reconsideration motions are to be governed by the procedures set forth in Superior Court Rule 320(c) and (c)(1).

Rule 322.3. RECORD ON REVIEW; STANDARDS OF REVIEW.

(a) The Record. In all reviews from magistrate decisions, the trial judge shall review the record as developed before the magistrate, which shall include: the exhibits and other evidence admitted before the magistrate, the transcript of proceedings, if any, to include electronic record of proceedings, and a certified copy of the order or judgment appealed from. No additional evidence shall be taken or considered.

(b) Standards of Review :

- (1) **Findings of fact:** Factual determinations are to be reviewed for clear error;
- (2) **Legal issues:** Legal findings, statements of law, and the application thereof, are to be afforded plenary review

(c) Hearings. The trial judge may determine the review with or without a hearing and may affirm, reverse, modify, or remand, in whole or in part, the magistrate's order or judgment. The trial judge should, to the extent practicable, determine all petitions for review based on the record presented. Hearings may be scheduled only where deemed helpful or necessary to clarify the evidence of record or the issues presented, although the reviewing judge may not admit additional evidence in any case on review. Hearings are deemed helpful where: the issue presented is novel and the outcome will have significant precedential value; where clarification of issues or facts are required given the state of the case record; where a subsequent judicial decision or change in the law will have bearing on the case. In all other circumstances, hearings or arguments are unnecessary and disfavored, and should be avoided.

Rule 322.4. OPINIONS/DECISIONS

(a) Format. Decisions of the trial judge in review proceedings need not be in the form of an opinion. A judge, when faced with an issue(s) that is not novel or is resolved under clear precedent, may enter a summary order resolving the matter.

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THIS 23 day of Nov. 2010
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CLERK OF THE COURT
By *[Signature]* Court Clerk I

A Memorandum Opinion may be done, at the discretion of the trial judge, where elucidation of the issues and the applicable law is warranted.

(b) For Publication/Not for Publication Opinions.

An opinion resolving a petition for review is published when it has precedential or institutional value. A trial judge who wishes to have an opinion published shall so indicate by noting, "For Publication" at the top thereof and including, in the distribution list, the "Library (for publication)." Opinions not bearing that designation will be regarded as "Not For Publication."

All opinions, both "For Publication" and "Not for Publication," shall be uploaded to the Court's website for the benefit of the local bar.

Rule 322.5. Dismissals.

(a) Voluntary Dismissal. A petitioner may voluntarily dismiss a petition for review, upon payment of all filing fees and notice to the clerk of his/her wish to voluntarily dismiss the review proceeding.

(b) Involuntary Dismissals.

- (1) **On Motion.** On motion by the respondent, a review proceeding may be dismissed by a judge designated to hear the matter.
- (2) **Failure to Prosecute:** when a petitioner fails to comply with the rules of this court, the Clerk of the Superior Court may issue written notice of the deficiency to the petitioner or counsel, if any of record, that upon expiration of ten (10) days from the date of the notice, the review petition may be dismissed for failure to prosecute unless the petitioner remedies the noted deficiency within that time. If the deficiency is not remedied within this period, the Clerk is authorized to dismiss the petition for review may be dismissed for failure of prosecution, and issue a certified copy of such dismissal order to the parties. The petitioner shall not be entitled to remedy the deficiency after the review is dismissed, except by order of the Court.

A judge may consider a motion to set aside a dismissal order and to reopen a matter that is dismissed under this rule, upon filing of a motion filed within five (5) days after the date of entry of such

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dismissal. However, such order may be set aside, and the review reopened, only upon a showing of good cause or excusable neglect. At the expiration of the period set forth for seeking reopening, the review shall be considered closed.

Notwithstanding the preceding paragraphs, if a petitioner fails to comply with these rules, or an order of the Court, with respect to the timely filing of briefs and supporting documentation, the Clerk of the Court, after the tenth (10) day following the due date, is authorized to dismiss the petition for review for want of timely prosecution. The procedure to be followed in requesting an order to set aside dismissal of the review is the same as set forth in the preceding paragraphs.

- (3) Nothing in preceding paragraphs or in these rules is intended to preclude a judge, to whom a petition for review has been assigned, from dismissing a review petition for failure of prosecution, for failure to comply with the rules or the order(s) of the Court.

Rule 322.6. Motion for Stay; Bond.

(a) **Applicability.** A petitioner who intends to challenge a magistrate's decision, or who files a petition for review, may be required to file a bond or to provide other security to ensure payment of costs of this review and may, further, petition the Court to stay the judgment.

(b) **Bonds or other security.** In civil cases, a judge or magistrate may require a litigant who files a petition for review from a magistrate decision, or who files an appropriate appeal to the V.I. Supreme Court, to file a bond or provide other security in such form and amount as he/she finds necessary to ensure payment of costs associated with the review, including attorney's fees, pursuant to applicable law or Rules of this Court.

- (1) **Appeal Bond; Amount and Purpose.** An appeal bond may be set in an amount, generally a nominal sum, that is intended to secure the costs of an internal review or appeal, as set forth by applicable law and court rules.

Upon the filing of a petition for review, the Clerk shall return the case to the deciding magistrate for determination of an appropriate bond. The Superior Court magistrate in each respective case may, in the event a petition for review is filed, require a petitioner in a civil case to file a bond or provide other security in such form and amount as

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necessary to ensure payment of costs on review, including attorney's fees, pursuant to applicable rules of the Court and other law governing fees and costs. An appeal bond set by a magistrate must be satisfied within five (5) days of an order setting the same. A trial judge may dismiss a petition for review for want of prosecution, where the petitioner fails to satisfy an appeal bond set by a magistrate.

(2) **Supersedeas Bond.** The Court may set a supersedeas bond, in accordance with established law, to safeguard the prevailing party's ability to collect on the judgment in the event the petition for review is decided in that party's favor.

(3) **Requests for Stay of Judgment or Order in Civil Cases.**

(A) **Service and Filing of Motion for Stay.** The motion for stay shall be served on all parties to the case and filed with the Clerk of the Court. The Clerk shall submit a copy thereof to the magistrate who decided the matter, and shall enter the same onto the docket. A copy of the motion shall also be served on the Chief Marshal, and shall serve as a temporary stay until entry of an order granting or denying the motion for stay.

(B) **Authority to Consider Motions for Stay.** Motions for stay are to be considered by the magistrate who decided the matter, where practicable, or by the trial judge assigned to conduct the review. Such motions are to be determined on an expedited basis and, where practicable, within three (3) days of filing of the same.

(C) **Refusal to Stay:** Upon a showing that a magistrate has refused a stay or otherwise failed to act on a motion for a stay of judgment pending review under this rule, the movant may, with reasonable notice to the parties, apply to the judge designated to review the matter for a stay.


(D) **Conditioning Stay Upon Giving of Bond in Civil Cases.** A magistrate or judge reviewing a motion for stay pending review may condition such stay upon the filing of a bond or other appropriate security, as

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CLERK OF THE COURT
By *Veneta H. Velazquez* Court Clerk *V*

provided by these rules. If security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the Superior Court and irrevocably appoints the Clerk of the Superior Court as the surety's agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. A surety's liability may be enforced on motion in the Superior Court without the necessity of an independent action. The motion and such notice of the motion shall be served on the Clerk of the Superior Court and on the sureties, by certified mail.

(E) Motions for Stay of Judgment or for Release Pending Review in Criminal Case.

- (i) **Pending Review from Magistrate Decision.** Motions for release pending review from a magistrate decision in a misdemeanor criminal case that is within the magistrate's jurisdiction to consider are to be filed with the Clerk of the Court at the time of filing of a petition for review, who shall forthwith enter the same onto the docket and forward to the magistrate who presided over the matter. Such motions are to be determined on an expedited basis, after reasonable notice to the non-movant(s). The magistrate shall promptly review the motion and submit notice of the same, and a copy of the order to the trial judge assigned to conduct the review. If a magistrate denies a motion for release pending appeal, or imposes conditions of release, the magistrate shall state in writing the reasons therefor.
- (ii) A motion for expedited review shall accompany the motion in every instance. Accordingly, motions for release pending review in criminal cases before magistrates of the Court are to be determined, to the extent practicable, within five (5) days after filing with the Court.

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By  COURT CLERK I

- (iii) The trial judge assigned to review a magistrate decision may, upon motion by a party, also review the magistrate's order granting or denying a motion for release pending review, without the need for an independent review action and without additional fees.

Rule 322.7. Subsequent appeal.

- (a) A judge reviewing a magistrate decision shall indicate the decision made on the petition for review, and the reasons therefor, in a written opinion or order, which is entered into the official case record.
- (b) A decision of a trial judge reviewing a magistrate decision under Rule 322 is a final order, appealable to the Supreme Court of the Virgin Islands. A party wishing to challenge the trial judge's determination in that regard may file a notice of appeal with the Superior Court, seeking review of the judge's decision in the Supreme Court of the Virgin Islands, in accordance with V.I.S.C.T.R. 5(a) – (b), as applicable.
- (c) The appellant shall file an original and three copies of a notice of appeal, which are to be distributed by the Clerk as follows: original in the official case record, copy to the trial judge who conducted the review, and a copy to the Clerk of the Supreme Court.

Rule 322.8. Review of Magistrates' Pretrial Determinations:

(a) **Recommended Findings.** A magistrate's recommended findings in pretrial matters heard by designation are not orders and, therefore, are not reviewable.

(b) **Orders by Designation; Motions for Reconsideration.** Pretrial matters decided by a magistrate pursuant to Superior Court Rule 320(a) may be reviewed upon the filing of a Motion for Reconsideration, which is to be decided by the judge to whom the case was initially assigned, in accordance with Rule 320(c). (See also 4 V.I.C. § 123(b)).

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Court Clerk I
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(c) Motions for Reconsideration shall be filed and served on the opposing party no later than ten (10) days after entry of the order for which review is sought. Oppositions to the motion for reconsideration may be filed within ten (10) days after service of the motion.

Rule 322.9. Trial by Consent; Review:

All final orders/judgments entered into by magistrates, while presiding over a jury or non-jury civil trial pursuant to 4 V.I.C. § 123(d) and the consent procedures established in Superior Court Rule 321, are orders of the Court, appealable to the Supreme Court of the Virgin Islands as any other appeal from the final judgment of a Superior Court judge.

Rule 322.10. Improper Filing:

If an appeal or motion for review/reconsideration permitted by this rule is mistakenly filed in the incorrect forum, the Superior Court shall, upon receipt of a date-stamped copy, deem the document as filed in the Superior Court as of the date so filed in the other forum and shall indicate the same on the official docket.

Rule 322.11. Petition to Issue Writ of Mandamus to Magistrate.

(a) **How Filed.** A party to a case who seeks to compel a magistrate to perform some duty the magistrate is required to perform but has neglected or refused to perform, or to enjoin action by a magistrate that exceeds his/her authority, may file an application for a writ of mandamus to the Presiding Judge to compel appropriate action by a magistrate. Such applications must conform to title 5, section 1361 and case law developed thereunder. The Clerk shall direct all such applications for mandamus relief to the presiding judge, and serve a copy on the affected magistrate and the Court's general counsel. The Presiding Judge may resolve the application based on the filing submitted by the movant or may permit the magistrate to file a written answer/explanation of the action or inaction in question.

(b) **Caption.** Petitions for writs of mandamus are to be filed as independent civil actions and shall name the party as petitioner and the magistrate as respondent, respondent, as set forth below. The caption, and the official docket, shall further reference the Case number

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By Chancel Court Clerk T

of the original action in which the challenged conduct occurred.

JOHN DOE,)	
Petitioner,)	
)	SX-10-CV-521
v.)	Re: SX-10-CRIM.-21
)	
HON. JASON MCDOE, Magistrate)	
Respondent.)	
_____)	

Rule 322.12. Petitions for Review Pursuant to 20 V.I.C. Section 493c(f)(1)

- (a) A person who is entitled to review of suspended driving privileges, pursuant to 20 V.I.C. § 493c(f)(1), may petition the court for a review of such suspension in accordance with that statute.
- (b) In all cases in which a petition for review has been filed prior to arraignment, as provided by the statute, the magistrate who made the initial determination shall undertake a review, under the standards set forth in the statute

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VENERABLE JUSTICE J. B. SOLOMON
CLERK OF THE COURT
By: *C. Chan* Court Clerk *I*