

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

IN RE:) **PROMULGATION No. 2018-002**
)
AMENDMENTS TO THE RULES)
GOVERNING THE SUPERIOR COURT)
OF THE VIRGIN ISLANDS.)
_____)

ORDER OF THE COURT

THIS MATTER is before the Court pursuant to an August 21, 2018 transmittal from the Advisory Committee on Rules, containing its August 2, 2018 report and recommendations with respect to the Superior Court’s request to amend the Virgin Islands Rules of Civil Procedure and Criminal Procedure. In its report, the Committee recommends that (1) the proposed Rules 21, 22, 23, 24 and 25 of the Rules Governing the Superior Court of the Virgin Islands, which this Court approved as to substance in its May 22, 2018 order, be removed from the Superior Court Rules and instead included in the Virgin Islands Rules of Civil Procedure; and (2) certain other miscellaneous amendments to the Virgin Rules of Civil Procedure and Criminal Procedure be adopted to account for the establishment of the Complex Litigation Division and to address concerns raised by members of the Bar.

Having considered the Committee’s report, this Court agrees with both of the Committee’s recommendations. Accordingly, it is hereby

ORDERED that, **effective October 1, 2018**, the Virgin Islands Rules of Civil Procedure and the Virgin Islands Rules of Criminal Procedure **SHALL BE AMENDED** as set forth in Exhibit 1 to this Order. It is further

ORDERED that the Amendments to Rules 21, 22, 23, 24 and 25 of the Rules Governing the Superior Court of the Virgin Islands, as proposed by the Presiding Judge of the Superior Court and previously approved by this Court in its May 22, 2018 Order, are **RESCINDED**, and shall be

SUPERCEDED by Rules 92, 93, 94, 95, and 96 of the Virgin Islands Rules of Civil Procedure.

It is further

ORDERED that copies of this order be directed to the appropriate parties.

SO ORDERED this 28th day of September, 2018.

/s/ Ive Arlington Swan
IVE ARLINGTON SWAN
Associate Justice

/s/ Maria M. Cabret
MARIA M. CABRET
Associate Justice

/s/ Rhys S. Hodge
RHYS S. HODGE
Chief Justice

ATTEST:
VERONICA J. HANDY, ESQ.
Clerk of the Court

**AMENDMENTS TO THE
VIRGIN ISLANDS RULES OF CIVIL PROCEDURE**

(effective October 1, 2018)

Rule 4. Summons and Service of Process

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(d) Third-Party Actions. Unless the court orders differently, a third-party or fourth-party complaint shall be served in the same manner as a complaint.

Note to Subdivision (d): The Advisory Committee has been advised that in some instances in the past, the Bar or the clerk's office has expressed uncertainty on whether a complaint in impleader, adding a third- or fourth-party defendant, must be served in the fashion of initial process in the action. The Advisory Committee concluded that – since the party to be added has not previously been brought before the court by service of process in the action – formal service under Rule 4 of the Rules of Civil Procedure is needed. Thus the Committee supports the Superior Court's recommendation that this be clarified by amendment to Rule 4 of the Civil Rules.

Rule 10. Form of Pleadings

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(e)(1) Notation of “Complex” in the Pleading. A plaintiff may designate or a defendant may counter-designate an action or proceeding as complex in the caption of its initial pleading at the earliest opportunity for that action or proceeding. Failure to make such a designation shall not limit the discretion of a Superior Court judge or a Complex Litigation Division judge in considering whether an action should be determined to be complex under the provisions of Rules 92 through 96.

(e)(2) Parties. For purpose of this rule, the word “plaintiff” includes “petitioners,” “third-party plaintiffs,” and “fourth-party plaintiffs” and the word “defendant” includes “crossclaimants,” “intervenor,” “respondents,” “third-party defendants” and “fourth- party defendants.”

Note to Subdivision (e): The Civil Rule 10 additions proposed here would implement the requirement for parties to include in the caption of their initial pleadings that a case should be designated as complex. The Advisory Committee has added the second sentence of proposed Rule 10(e)(1) to stress that party designation is not the only avenue by which a case may be declared complex under these Rules. As set forth in Rule 93, if a case is assigned to a Superior Court judge who comes to believe that it should be managed as a complex case, the judge may refer the case to the Complex Litigation Division judge for a determination of whether the case will have complex litigation status.

Subdivision (e)(2) of Rule 10 will simply stress that any party, however situated in the posture of a case, can make a complex case designation at its earliest opportunity by including that designation on the face of its pleading.

Rule 23. Class Actions

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(d) Conducting the Action.

....

(3) Automatic Initial Designation as Complex. Every case in which the complaint pleads a putative class action shall initially be designated as complex, transferred to the Complex Litigation Division, and reassigned to the Complex Litigation Division judge for determinations and management under the provisions of Rules 92 through 96.

Note to Subdivision (d)(3): The Advisory Committee agreed with the suggestion that any case that is pled as a putative class action should initially be referred to the Complex Litigation Division, where the judge presiding in that Division can determine whether the action should be retained for purposes of centralized management in the Division, or referred to another judge of the Superior Court in the normal assignment process. The Advisory Committee changed the draft rule's triggering point – which was initially proposed to be applicable at the time a certification ruling is made – and is recommending the version of this rule shown here, which makes the referral applicable when the pleading purporting to state a class action claim is initially filed. Because of the proceedings leading to a certification ruling can take months or years, and may involve extensive pre-certification discovery and motion practice, triggering the initial designation as complex upon the initial filing was deemed a safer system by the Advisory Committee.

Rule 92. Complex Cases

(a) Definitions.

“Complex case.” A complex case is a civil action or proceeding that requires exceptional judicial management to avoid placing unnecessary burdens on the court or the litigants and to expedite the case, keep costs reasonable, and promote effective decision making by the court, the parties, and counsel.

“Court.” When used in reference to complex litigation cases, the word "court" shall mean the judge(s) assigned to the Complex Litigation Division and – to the extent permissible by law and as specified by written order of the Complex Litigation Division judge(s) – any master(s) or magistrate judge(s) assigned to the Complex Litigation Division.

(b) Presumptively Complex Claims. An action or proceeding is presumptively complex if it involves one or more of the following types of claims:

(1) environmental tort claims, mass tort claims, or toxic tort claims commenced by multiple parties (whether as one action or multiple, individual actions);

(2) the same or similar construction, design, or manufacturing defect claims stated in multiple actions or involving multiple parties, structures, or products;

(3) contract, statutory, or tort claims commenced by multiple parties (whether as one action or multiple, individual actions) arising out of a natural disaster or other territory-wide or

island-wide event;

(4) securities claims or investment losses involving multiple parties;

(5) class actions; and

(6) insurance coverage claims (including indemnification and contribution claims) arising out of multi-party proceedings in any of the above categories of cases.

(c) **Complex Case Assignment; Factors for Consideration.** The assignment of a case to the Complex Litigation Division shall be made by the Presiding Judge, who shall give appropriate consideration to the type of claims involved, the law governing the action or proceeding, and the following factors:

(1) whether the action involves a large number of parties; many claims with common, recurrent issues of law or fact associated with a single product, natural disaster, or complicated environmental or toxic tort; or a high degree of commonality of injury or damages among the claimants; and

(2) whether assignment to the Complex Litigation Division may unreasonably delay the case, increase expense, complicate the action, or unfairly prejudice a party; whether coordinated discovery would be advantageous; whether the cases require specialized expertise and case processing by the dedicated Complex Litigation Division judge and staff; whether assignment would result in the efficient utilization of judicial resources and the facilities and personnel of the court; whether issues of insurance, limits on assets and potential bankruptcy can be best addressed in coordinated proceedings; or whether there are related matters pending in federal court or in other state or Territorial courts that require coordination by the Complex Litigation Division judge.

(d) **Initial Designation; Determination of Complex Case Status; Assignment.** Each action or proceeding (i) that has been designated or counter-designated as complex in any party's pleading as provided in Virgin Islands Rule of Civil Procedure 10(e), or (ii) which the judge to whom it is initially assigned believes should be subject to management as a complex case, shall be forwarded as soon as practically possible to the Complex Litigation Division judge for a determination – after hearing from the parties and consultation with the judge to whom the action or proceeding was initially assigned – whether that action or proceeding should be treated as a complex case for purposes of management pursuant to Rules 92 through 96. If the Complex Litigation Division judge decides that an action or proceeding is not complex, then the case shall remain with the judge to whom it was initially assigned. If the Complex Litigation Division judge agrees that the action or proceeding should be managed as a complex case, the Clerk shall reassign the case to the Complex Litigation Division judge, who shall then preside over the case for all purposes, including trial, unless the case is subsequently determined no longer to be complex.

(e) **Subsequent Determinations as to Complex Case Status.**

(1) ***Actions Not Initially Determined to be Complex.*** At any time during the pendency of an action that has not been initially determined to be complex, the judge to whom it is assigned may request that the Complex Litigation Division judge consider whether the matter should be treated as complex. The case will be forwarded to the Complex Litigation Division judge for a determination pursuant to the provisions of subparts (b), (c) and (d) of this Rule.

(2) ***Re-Assignment of Cases No Longer Determined to be Complex.*** In any action initially determined to be complex as provided in subparts (b), (c) and (d) of this Rule, if the Complex Litigation Division judge later determines that the action should no longer be treated

as complex, the case shall be returned to the Clerk to be transferred to the appropriate division and reassigned to the appropriate judge.

(f) Severance. Separable issues, claims, crossclaims, counterclaims, third- or fourth-party claims within a complex case that do not warrant management by the Complex Litigation Division may be severed pursuant to Rule 42(b) of the Virgin Islands Rules of Civil Procedure by order of the Complex Litigation Division judge. Claims severed under this rule shall be given a new case number and assigned to the judge to whom the case was originally assigned, or, if none was assigned, to the next judge in the assignment rotation.

(g) Authority of the Presiding Judge. Nothing in Rules 92 through 96 shall affect the authority of the Presiding Judge of the Superior Court, in accord with Title 4 of the Virgin Islands Code, to supervise the caseloads of the several judges in that court.

Notes

Subdivision (a). In addition to the general proposed definition of “complex case” explaining the need for specialized management tools, subpart (a) also defines “court” to make clear, first, that any masters appointed to assist in the administration of the cases in the Complex Litigation Division will be empowered, subject to orders of the Complex Litigation Division Judge, to perform the functions enumerated in the Rules. Also, the Committee added magistrate judges to this definition to cover the possibility that – at some point in the future – the court may be authorized to utilize magistrate judges in complex case management.

Subdivision (b). Categories (1) through (5) carry forward the prior draft’s identification of kinds of cases that – presumptively – will present complex case management issues. In subpart (b)(6) the Advisory Committee edited the language in light of comments from the Virgin Islands Bar that the presumption regarding insurance coverage claims, indemnification and contribution, should be applicable only where there are multiple parties or claims involved. The Advisory Committee considered and rejected the need for an additional “catch-all” category (7) for other cases that will require complex treatment, given the operation of the provisions for designation of any case by the parties, and for referral by Superior Court judges to the Complex litigation Division judge of any case that appears to warrant designation as a complex case.

Subdivision (c). The factors identified by the Superior Court, and the court systems in several other jurisdictions are set forth in Subpart (c) to assist the Presiding Judge in considering the proper assignment of potentially complex cases.

Subdivision Subpart (d). This provision, which calls for submission to the Complex Litigation Division judge of cases to be considered for complex treatment, has been broadened to include not only (i) those where the parties make such a designation on the face of their pleadings, but also (ii) those cases which do not receive such a party-designation but the Superior Court judge to whom the case is assigned believes that the case is nonetheless complex and warranting management under these Rules. In both instances, the case is to be forwarded to the Complex Litigation Division judge for a determination – considering the presumption in Rule 92(b) and the

factors identified in Rule 92(c), whether the case actually warrants consideration as a complex litigation.

Subdivision (e). This subdivision of the Rule deals with two distinct situations. Subdivision (1) addresses cases that are not initially determined to be complex, but which – as the matter progresses – display features that lead the Superior Court judge to whom the cases is assigned to request that the matter be designated a complex case for management under these Rules. Subdivision (e)(2) authorizes the Complex Litigation Division judge to determine, at any time in the preparation of the case, that a matter is no longer complex, such that it can be reassigned to another Superior Court judge.

Subdivision (f). This provision recognizes that there may be issues, claims or offshoots of the litigation that are not themselves complex, and which could advantageously be severed from a pending complex case, for management as a simpler matter outside the Complex Litigation Division.

Subdivision (g). This subdivision of Rule 92, which is set forth by the Advisory Committee as a free-standing subdivision to reflect its application in multiple phases of the process, recognizes the role of the Presiding Judge in moderating the caseloads of all Superior Court Judges, as provided in the Virgin Islands Code.

Rule 93. Centralized Management within the Complex Litigation Division

(a) Related Cases; Master Case Dockets; Consolidation

(1) Orders Identifying Related Cases. The Complex Litigation Division judge may order that a specific group of cases shall be treated as related for purposes of issuing case management orders, including standing orders, applicable to all cases within that group.

(2) Establishment of Master Cases. The court may order that cases be coordinated together under a master case and assign a unique name to each master case. The Clerk shall assign a unique civil miscellaneous number to each master case opened by the court and shall maintain a docket separately. Parties must be given the opportunity to be heard by the court concerning which cases should be coordinated together under a master case and whether a different form of coordination is more appropriate than that proposed by the court.

(3) Consolidation Only by Express Order. Neither designating cases as complex, orders deeming cases related for management purposes, nor coordinating them under a master case consolidates the cases together or merges the claims into a single case in the absence of an order to that effect from the Complex Litigation Division judge.

(b) Filing Papers in Complex Cases; Individual and Master Case Filings.

(1) Individual Case Filings. Once a case has been designated as complex, assigned to a category, and grouped under a master case, each subsequent order, opinion, pleading, notice, motion, or other document pertaining to that individual case shall list the caption and unique case number assigned to that individual case (“individual case filings”). Unless the court determines otherwise for a specific master case, individual case filings include, but are not limited to, pleadings (including amendments thereto), voluntary and stipulated dismissals, dispositive motions that do not involve facts identical to all cases assigned to the same master

case. Individual case filings will not be docketed or deemed filed in a master case. However, all individual case filings shall identify in the caption the category under which that case has been assigned and the master case under which that individual case has been grouped.

(2) **Master Case Filings.** Once a master case has been opened and the individual cases grouped under it, all subsequent orders, opinions, notices, motions, and other documents pertaining to the master case, or to a substantial number of individual cases grouped under that master case, shall be filed in the master case and not in the individual cases (“master case filings”). Master case filings shall specify in the master case name and number in the caption and may indicate which individual case or case, subject-matter, or issue to which that filing applies. Master case filings are deemed to have been docketed and filed in each individual case to the extent that such filing applies to an individual case. Parties shall not file, and the Clerk’s Office will not docket, master case filings in the individual cases unless directed by the court.

(c) Case Management Procedures in Master Docket Cases; Orders.

(1) **Case Management Conference Scheduling.** As soon as practicable after a master case has been opened and individual cases have been assigned to that docket, but no later than 60 days thereafter, the court shall hold an initial case management conference.

(2) **Requirements for Parties’ Joint Pre-Conference Statement.** At least 21 days before the scheduled date of the first case management conference in each master case, counsel for the parties – having met and conferred in advance – shall serve and file with the court a joint report of the parties’ planning meeting setting forth the following:

- (A) a brief factual background of the claims and defenses of all parties;
- (B) whether counsel anticipate impleading or interpleading additional parties or filing third- or fourth-party complaints;
- (C) a proposed discovery plan, if substantially agreed upon by all or a majority of all counsel who have appeared to date in the case; and
- (D) all areas of agreement and disagreement regarding discovery.

(3) **Conduct of Case Management Conference.** The court shall conduct all case management conferences according to the provisions of Virgin Islands Rule of Civil Procedure Rule 16, and shall consider and take appropriate action on the matters specified by Rule 16(c)(2). Unless the judge assigned to the Complex Litigation Division orders otherwise for that master case, all case management conferences in every master case shall be conducted by the master assigned to the Complex Litigation Division.

(4) **Orders; Objections.** Within 28 days after each case management conference, the court shall issue a case management order, or revise or amend a prior order, to govern discovery or other proceedings. Within 14 days after the issuance of a case management order, any party may serve and file a notice stating –with respect to specific identified provision(s) of the order – any objection or the reasons why compliance would be burdensome or would unduly hinder litigation, and (ii) an explanation of the reasons for any modifications requested. Failure by a party to file a timely notice under this rule waives any objection by that party to the terms of each case management order issued.

Notes

Subdivision (a). This provision, overall, is intended to recognize various degrees of coordination that may be deemed desirable by the Complex Litigation Division judge. At the lowest level of coordination, the Rule in subdivision (a)(1) recognizes the power of the court to identify cases as “related” such that management orders, and standing orders, can be made applicable to multiple cases at once. In subdivision (a)(2) the establishment of “master cases” is addressed, along with the litigant-rights provision assuring that the parties will be given an opportunity to be heard on the issue whether a set of cases should be coordinated under a master case. Subdivision (a)(3) emphasizes that consolidation is not affected by either the court’s treatment of some cases as “related” or by establishing a master case docket and assigning various cases to that docket; each case remains separate unless the court enters an order expressly consolidating them.

Subdivision (b). This subdivision states the baseline (1) that court orders and party filings in an individual case are filed, as usual, in the docket for that case, and that (2) where a master case docket has been established, all filings related to the master case will be filed in that docket and the clerk will not file master case filings in individual case dockets.

Subdivision (c). This provision requires the Complex Litigation Division judge to hold a case management conference promptly, and imposes an outside date set at 60 days after a master case docket is established. The parties are required to prepare a report in advance of the case management conference, and under subpart (d)(2) the minimum components of that report are identified. The conference itself will be conducted as provided in Civil Rule 16, and the Complex Litigation Division judge is required to consider the planning factors identified in Rule 16(c)(2). Subpart (d)(4) adopts strict order-issuance timelines (requiring an order within 28 days of any case management conference) and provides the parties an opportunity in every instance to make objections or modification requests within 14 days after issuance of any case management conference. If a party files no opposition to the order in that fashion, the party will be deemed to have agreed to the order, waiving any objection thereto.

Rule 94. Crossclaims; Counterclaims; Third- and Further-Party Actions.

Crossclaims, counterclaims, and third-party actions brought in complex litigation cases shall be governed by Rules 7 through 15-2 of the Virgin Islands Rules of Civil Procedure. However, fourth- and further-party complaints shall not be of right, but shall only be permitted on express finding by the court that such additional pleadings will not delay or otherwise interfere with the orderly disposition of the underlying case. All crossclaims, counterclaims, and third- or fourth-party complaints shall be filed in the individual case to which they relate, and shall also be filed in the master case docket only if directed by the Complex Litigation Division judge.

Notes

Rule 94 is recommended in substantially the form proposed by the Superior Court. It recognizes the extra burdens and complication that impleader may cause, in third- and further-party claims under an existing complex case, and therefore requires a motion for leave to file such pleadings. In keeping with the provisions of Rule 93 intended to minimize excess filings, Rule 94 also provides what – where impleader is permitted by the Complex Litigation Division judge on application of

a party – the papers relating to such pleadings will be filed only in the individual action involved, unless the judge directs that they be filed in the master docket as well.

Rule 95. Complex Litigation Division Assignment of Masters.

Because complex cases inherently present exceptional circumstances, the judge assigned to the Complex Litigation Division may appoint and assign a master to assist with any of the cases pending in the Complex Litigation Division, whether individual cases, related cases, or master case dockets. Once appointed, the master shall have the powers and authority specified in the order of appointment, consistent with V.I. R. Civ. P. 53.

Notes

Rule 95 is recommended in substantially the form proposed in the order of the Superior Court. The last line is streamlined so that any powers of a master as authorized in Virgin Islands Rule of Civil 53 can be adjusted in the order of the Complex Litigation Judge appointing a master in such cases, consistent with Rule 53. The Advisory Committee contemplates that as any master system is implemented – and as filing systems change with the implementation of any electronic filing program for the trial courts – the master provisions of Rule 95 should be revisited and refined as necessary.

Rule 96. Termination of Centralized Management for Identified Cases.

(a) Determination by Complex Litigation Division Judge. If the judge assigned to the Complex Litigation Division determines that centralized management is no longer warranted for an entire category of cases, the judge must issue a written opinion in the affected cases providing an explanation to the parties, as well as the Presiding Judge and the Administrator of Courts, of the justification for concluding that the identified cases no longer warrant continued management within the Complex Litigation Division, and must prepare a report detailing what matters remain unresolved in each case, to which division each case should be transferred, and which district will assume venue. Unless specifically extended by the Complex Litigation Division judge, the authority of any appointed master shall immediately terminate upon the determination by the Complex Litigation Division judge that centralized management is no longer warranted.

(b) Notice and Comment Period. Upon the issuance of an opinion and explanation pursuant to subpart (a) of this Rule, the Administrator of Courts shall give notice to the Bar and the public, advising them of the contemplated termination of complex case management for the identified cases, and inviting comments or objections. All comments and objections will be forwarded to the Presiding Judge for consideration, or the Administrator of Courts where appropriate. Once the comment period has closed, the Presiding Judge shall then determine whether that category of cases should be removed from the Complex Litigation Division and centralized management terminated. If termination is approved, the Presiding Judge shall then issue appropriate orders in each remaining case, reassigning the case among the judges assigned to the other divisions. If termination is disapproved, the judge assigned to the Complex Litigation Division shall continue to preside over the category of cases and such cases shall remain within the Complex Litigation Division. Notice shall be given to the Bar and the general public of the Presiding Judge's determination.

Notes

Rule 96 establishes a two-step procedure if the Complex Litigation Division judge concludes that an entire category of cases – formerly treated as complex for management under these rules – should no longer be subject to that form of administration by the court. The first step, set forth in subpart (a) of the Rule, requires the issuance of an opinion that explains the reasons for ending complex case treatment for the identified cases. This step assures that not only the parties, but also the Presiding Judge and the Administrator of Courts, will have notice of the Complex Litigation Division judge’s contemplated treatment of the particular group of cases involved. Subpart (a) goes on to require careful assessment by the Complex Litigation Division judge of the cases involved – identifying issues that remain unresolved in each case, and discussing where the case would be transferred for further proceedings. The second step of the process, noted in subpart (b) of the Rule, requires the Administrator of Courts to provide notice to the Bar and the public of the contemplated termination of complex case status for the identified litigations, and to establish a comment period for interested or affected parties. After that opportunity for input has closed, the Presiding Judge is then authorized in subpart (b) to determine whether centralized management of the identified group of cases will be terminated or not, and if so, to reassign those cases. Notice of the Presiding Judge’s determination will then be provided to the Bar and the public.

**AMENDMENTS TO THE
VIRGIN ISLANDS RULES OF CRIMINAL PROCEDURE**

(effective October 1, 2018)

Rule 57. Transfers Involving Related Complex Civil Cases.

The Presiding Judge may assign a criminal proceeding to the judge assigned to the Complex Litigation Division if the criminal proceeding arises out of the same transaction or occurrence that gave rise to one or more civil cases pending in the Complex Litigation Division of the Superior Court and the efficient use of judicial resources will be fostered by coordination with the related civil matters. Provisions shall be included in any such order of assignment to protect any individual defendant's Fifth Amendment and other constitutional rights.

Note: The Advisory Committee recognizes the benefits that are intended to be achieved by the proposal to allow coordination of civil and criminal proceedings relating to the same events or conduct. However the Committee was concerned that clarification was needed to assure that any individual defendant's Fifth Amendment and other constitutional rights will be protected in the proceedings that follow. Hence the Advisory Committee added the final sentence to the Rule text as recommended.