

**RULES OF THE ETHICS AND GRIEVANCE COMMITTEE**  
**with Committee Notes<sup>1</sup> and Amendment Notes<sup>2</sup>**

**Rule 1: The Grievance; Assignment of the Grievance; Response of the Respondent.**

**Rule 1.1 Filing of the Grievance; Confidentiality of Proceedings.**

(a) A grievance shall be commenced by the filing of a letter of complaint with the office of the Virgin Islands Bar Association, which grievance shall be referred to the Professional Ethics and Grievance Committee ("the Committee").

(b) Unless otherwise stated in these Rules, all grievances, and all proceedings relating to all grievances, including all hearings conducted by the Committee, shall be confidential, and shall not be open to the public, the press or any third party, without the consent of the Respondent and the Grievant.

COMMITTEE NOTE: This Rule is inconsistent in part with Rule 16A, Model Rules for Lawyer Disciplinary Enforcement 1996 Edition ("RLDE") which makes all records and proceedings of the disciplinary agency public after a finding of probable cause.

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1. "Committee Notes" reflect the intent of the Committee's Rules Panel, which drafted these Rules.

2. "Amendment Notes" reflect the intent of the various proponents of amendments to the Rules as drafted by the Rules Panel, which amendments received a majority of the votes of

the Committee.

**Rule 1.2 The Grievant; the Respondent.**

- (a) A Grievant under these rules may be:
1. a client or former client of the Respondent
  2. a person acting in a representative capacity with respect to a client or former client of the Respondent, including but not limited to a lawyer acting as counsel; an agent under power of attorney; or executor under a will.
  3. Any judge or any lawyer, pursuant to Rule 8.3 of the Model Rules of Professional Conduct.
  4. Any person claiming to be harmed by the statements or conduct of the Respondent.
- (b) (1) A Respondent under these Rules may be any regularly or specially admitted attorney, to the Virgin Islands Bar; or any attorney admitted pro hac vice; or any formerly admitted attorney with respect to acts committed prior to resignation, suspension, disbarment or transfer to inactive status, or with respect to acts subsequent thereto which amount to the practice of law; and any lawyer not admitted to the V.I. Bar who practices law, or renders or offers to render any legal services in the Virgin Islands.
- (2) All Respondents have an affirmative

duty to cooperate with the Committee, including but not limited to providing non-privileged books and records, cooperating with the investigation, and appearing at all hearings. Refusing or failing to cooperate with the Committee may result in the filing of additional charges and/or the imposition of additional sanctions, pursuant to R. 8.1(b) of the Model Rules of Professional Conduct, or any successor thereto.

COMMITTEE NOTE: The scope of persons who may be Respondents under this Rule 1. 2 (b) (1) is consistent with Terr. Ct. Rules 301(a) (4), 302 (c) , 303 (a) , (e) and (f) , and Rule 6A, RLDE.

This Rule 1.2 (b) (2) is consistent with R. 9A(1), RLDE, and the Commentary thereto.

**Rule 1.3. (a) Investigation of Grievances.**

The Committee shall investigate all charges of professional misconduct that may be brought to its attention in writing, or it may initiate such investigation on its own in accordance with Rule 6.24, in which case, the grievance shall be referred to as "In re [name of Respondent]," and it shall be duly docketed and assigned a docket number by the Executive Director of the Virgin Islands Bar Association ("the Executive Director").

(b) Any grievance, once filed by a Grievant, may be maintained by the Committee, including any investigation and the adjudication thereof.

COMMITTEE NOTE: This Rule 1.3(b) is consistent with R. 18I, RLDE.

**Rule 1.4 (a) Requirements of a Grievance.**

A grievance shall:

1. Provide the name and mailing address, and telephone number, if any, of the Grievant.
2. Identify the Respondent by name.
3. State at least in general terms the nature of the grievance or the offending conduct.
4. State the nature of the relationship between the Grievant and the Respondent.

(b) If a grievance is filed by a third person on behalf of the Grievant it shall identify the nature of the relationship between the Grievant and the person filing the grievance, and the reason for the third party filing. The grievance shall, in addition, provide the full name, mailing address, and telephone number, if any, of the person filing the grievance on behalf of the Grievant, in addition to the information required under subsection (a) of this Rule 1.4.

**Rule 1.5 Duties of the Executive Director.**

(a) Upon receipt of a grievance in compliance with these Rules, the Executive Director shall promptly:

1. Date stamp the grievance, or otherwise note thereon the date of receipt of same.
2. Open a separate file on the grievance which shall be indexed under both the Grievant's name and the Respondent's name.
3. Provide the grievance with a docket number. Said docket number shall consist of (i) a number, which is the next sequential number from that of the immediately preceding grievance; (ii) the year of filing; and (iii) the Subcommittee to which the grievance has been referred. Grievances assigned to the St. Croix Subcommittee shall be designated "STX"; grievances assigned to the St. Thomas-St. John Subcommittee shall be designated "STT." For example, No. 1-97-STT.

(b). A grievance which does not meet the requirements of these Rules may be returned to the Grievant, in which case it shall not be processed or docketed. A written explanation for the return shall be provided to the Grievant.

(c) The Executive Director shall keep appropriate

records which shall reflect the status of all grievances filed, (e.g. closed, pending, stayed, etc.), the disposition made, and the date thereof. The originals of all Disposition Forms, and the decisions of any panel of the Committee, shall be kept by the Executive Director and appropriately indexed.

**Rule 1.6 Assignment to Subcommittees; Transfers Between Subcommittees.**

(a) Upon the docketing of a grievance, the Executive Director shall promptly forward a copy of the grievance, and any attachments thereto, to the Chairman of the appropriate Subcommittee of the Ethics and Grievance Committee who shall assign the grievance to a panel of the Subcommittee for investigation and adjudication. The Executive Director shall forward the grievance to that Subcommittee for the district where the Grievant resides, if the Grievant is a resident of the Virgin Islands. If the Grievant is not a resident of the Virgin Islands, then the grievance shall be forwarded to the Subcommittee for: (i) the district where the Respondent has an office for the practice of law, or (ii) the district where the offending conduct was alleged to have occurred or, (iii) with respect to a matter in litigation, the district where the action was

filed. The Executive Director may consult with the Chairmen of the respective Subcommittees in making the appropriate assignment under this rule.

(b) In the interests of justice, or for the convenience of witnesses, or for any reason provided by these Rules or any other applicable Rules, a grievance may be transferred from one Subcommittee to the other, after consultation between the Chairmen of the respective Subcommittees. An order of transfer shall be signed by the Chairman of the transferor Subcommittee, and be directed to the Executive Director, with a copy to the Chairman of the transferee Subcommittee, and it shall note thereon the approval of the Chairman of the transferee Subcommittee. The Executive Director shall provide a new docket number to any grievance so transferred which shall indicate the assignment of the grievance to the transferee Subcommittee; and shall provide notice of same to the Chairmen of both Subcommittees. The grievance shall then be marked as "transferred" in the records of the transferor Subcommittee, and shall be shown as "Pending" in the records of the transferee Subcommittee.

**Rule 1.7 Assignment to Panels; Dismissals Without Assignment.**

(a) Except as stated in subsections (b) and (c) below, upon receipt of a copy of the grievance, which is in conformance with these Rules the Chairman of the Subcommittee to which it is assigned shall promptly:

1. Assign the grievance to a Panel, as defined in Rule 2, by a Notice to the Panel.
2. Provide a Notice to the Grievant of the receipt and of the processing of the grievance, which Notice shall be copied to the Respondent and the Panel.
3. Provide a Notice to the Respondent of the filing of the grievance, which notice shall be copied to the Grievant and the Panel.
4. The information required in the Notice to the Panel, Notice to the Grievant and Notice to the Respondent may be set forth in one, two or three separate documents, in the discretion of the Chairman.

(b) With respect to a grievance filed by a third party on behalf of the Grievant, under Rule 1.4(b), the Chairman may require that the Grievant verify the grievance as a precondition for further processing by the Committee. Verification shall not be required if the third party filer is acting as counsel to the Grievant.

(c) In the event that a grievance is frivolous on its face, or fails to state any facts from which it may be understood that any provision of the Model Rules of Professional Conduct may be implicated, the Chairman of the appropriate Subcommittee to whom the grievance is assigned may, in his discretion, but is not required to, dismiss the grievance without assignment to any panel. In exercising discretion under this Rule all grievances shall be liberally construed and no technical terms or forms of pleadings shall be required. This dismissal must be concurred with in writing by another member of the Committee and the number of all grievances dismissed without assignment shall be listed, by file number, in the Chairman's annual report. A file shall be maintained for two (2) years of any grievance dismissed without assignment.

(d) The assignment of a grievance to a panel by the Chairman in accordance with these Rules shall not mean or imply that the grievance is not frivolous, or that it may be understood that a provision of the Model Rules of Professional Conduct is in fact implicated by the grievance, or that the Chairman has made any evaluation pursuant to the provisions of subsection (c) of this Rule.

AMENDMENT NOTE: The last 2 sentences of subsection (c) were proposed in the amendment process prior to the Committee's vote on the Rules. The amendment was proposed "to temper the Chairman's discretion somewhat and to provide a mechanism whereby the Court could monitor the frequency of such dismissals without assignments." The proposed amendment passed by majority vote of the Committee, and was added to the Rules.

**Rule 1.8 Notice to the Respondent.**

(a) The Chairman of the Subcommittee to whom a grievance has been assigned shall provide the following information to the Respondent in the Notice to the Respondent:

1. The date of the Chairman's receipt of the grievance and the identity and mailing address of the Grievant.

2. The assignment of the grievance to the Subcommittee, the appointment of the Panel for the investigation and adjudication of the grievance, and the identity of every member of the Panel, including the identity of the Panel Chair.

3. That the Respondent shall respond to the grievance in writing within thirty (30) days, unless an extension is granted upon good cause shown. All responses shall be served on the Case Investigator, together with all documents pertinent to the grievance, whether in support or in defense thereof, shall be voluntarily produced by the Respondent along with his response. Any documents for which an attorney-client privilege

is claimed shall be identified in the Response by title, caption or description of subject matter, and date, if any, in the Response.

4. That the Respondent is under a duty to cooperate with the Committee, acting by and through its Panel, pursuant to Model Rule 8.1(b) of the Model Rules of Professional Conduct.

5. That the Case Investigator for the Panel may contact the Respondent and the Grievant to request additional information and documents.

6. (i) That if the Respondent has any grounds to seek the recusal of any members of the Panel, in accordance with Rule 2.10 hereof, that he shall do so promptly and in writing to the Panel Chair, stating with particularity the grounds for the recusal.

(ii) The Notice shall further state that requests for recusal which are not made within 30 days of receipt of the Notice to the Respondent shall be granted only upon (i) exceptional circumstances, or (ii) new facts or circumstances, which did not exist, or were unknown to the Respondent, at the time of receipt of the Notice to the Respondent.

(iii) The Notice shall further state that the burden to show grounds for recusal is at all time

on the person requesting same.

7. That the Committee has subpoena powers and may, during the course of the investigation, subpoena records and documents.

8. That upon a finding of probable cause to believe that an ethical violation has occurred, the Panel may hold a hearing on the record, at which hearing the Grievant may and the Respondent shall be required to appear.

9. That the Respondent may be represented by counsel at all stages of the grievance.

10. That the Grievant may be represented by counsel at all stages of the grievance.

11. That the grievance shall be processed in accordance with these Rules.

(b) The Respondent shall be provided with a true and complete copy of the grievance, and of all attachments thereto, in the Notice to the Respondent.

(c) The Notice to the Respondent may be served by regular mail to the Respondent's address, as shown in the records of the V.I. Bar Association.

COMMITTEE NOTE: The time for the Respondent's response under R. 1.8(a)(3) is consistent with R.11(D)(3), RLDE.

Service by regular mail at the Respondent's address, as shown in the records of V.I. Bar Association, is appropriate, and reasonably calculated to provide notice, because all members,

including specially admitted members, are under an obligation to notify the Bar of any change in their address. See By-laws, as amended, Article III, Section 7.

**Rule 1.9 Notice to the Grievant.**

(a) The Chairman of the Subcommittee shall provide the following information to the Grievant in the Notice to the Grievant:

1. The assignment of the grievance to the Subcommittee, the appointment of the Panel for investigation and adjudication of the grievance, and the identity of every member of the Panel, including the identity of the Panel Chair.

2. The time within which the Respondent shall answer the grievance.

3. That the Case Investigator for the Panel may contact the Respondent and the Grievant to request additional information and documents.

4. That the Grievant has a duty to cooperate with the Panel and the Case Investigator thereof.

5. That the Committee does not perform legal work for or on behalf of any Grievant, and that the Grievant is therefore advised to seek legal counsel to pursue or protect any and all legal rights he may have in connection with the subject matter of the grievance.

6. (i) That if the Grievant has any grounds to seek the recusal of any members of the Panel, in accordance with Rule 2.10 hereof, that he shall do so promptly and in writing to the Panel Chair, stating with particularity the grounds for the recusal.

(ii) The Notice shall further state that requests for recusal which are not made within 30 days of receipt of the Notice to the Grievant shall be granted only upon (I) exceptional circumstances or (ii) new facts or circumstances, which did not exist, or were unknown to the Grievant at the time of receipt of the Notice to the Grievant.

(iii) The Notice shall further state that the burden to show grounds for recusal is at all times on the person requesting same.

7. That the Grievant shall promptly notify the Panel of any change in his mailing address or telephone number.

8. That the grievance may be investigated and adjudicated by the Panel in the absence of the Grievant, or upon the withdrawal of the grievance by the Grievant.

9. That the Committee has subpoena powers and may, during the course of the investigation,

subpoena records and documents.

10. That upon a finding of probable cause to believe that an ethical violation has occurred, the Panel may hold a hearing on the record, at which hearing the Grievant may and the Respondent shall be required to appear.

11. That the Respondent may be represented by counsel at all stages of the grievance.

12. That the Grievant may be represented by counsel at all stages of the grievance.

13. That the grievance shall be processed in accordance with these Rules.

(b) The Notice to The Grievant may be served by regular mail to the address shown on the grievance.

**Rule 1.10 Notice to the Panel.**

In the Notice to the Panel, the Chairman shall:

(a) 1. Provide to the Panel Chair a copy of the grievance and all attachments thereto, as well as any other documents which are in the Chairman's possession which are or may be relevant to the investigation or adjudication of the grievance.

2. State (i) the date upon which the investigation must be completed, and (ii) the date upon which the Panel must decide whether there is

probable cause to conduct a hearing on the grievance.

3. State that, absent extraordinary circumstances, the investigation should be completed, and the Case Investigator's Report submitted to that Panel within no more than ninety (90) days of the assignment of the grievance to a Panel. It shall further state that, absent extraordinary circumstances, the Panel should meet within thirty (30) days after the submission of the Case Investigator's report to determine whether there is probable cause to continue with the grievance or whether additional investigation needs to be undertaken.

4. If additional investigation is required by the Panel, it should be completed within an additional thirty (30) days, and the Panel should reconvene within thirty (30) days thereafter to consider the additional evidence.

5. That if probable cause is found, that a Notice of Hearing or Notice of No Hearing should promptly issue, and a decision promptly rendered.

(b) Copies of the Notice to the Panel and of the grievance shall be furnished by the Chairman to each member of the Panel. Copies of all attachments to the grievance shall be promptly

distributed to the Case Investigator.

**Rule 1.11 Response by the Respondent.**

All grievances shall be answered by the Respondent within the time set by these Rules. Failure to timely answer the grievance shall be deemed an admission by the Respondent to all factual allegations contained in the grievance, and shall permit the grievance to proceed on a default basis.

COMMITTEE NOTE: This Rule 1.11 is consistent with Rule 33A, RLDE. See also Rule 3.3 (b) of these Rules.

**Rule 1.12 Consolidation of Grievances.**

(a) Where more than one grievance has been filed by the same Grievant against the same Respondent the grievances will, absent good cause, be consolidated, and assigned to the same panel for disposition.

(b) Where more than one grievance has been filed against a Respondent by different Grievants, the grievances will, absent good cause, be assigned to different panels for disposition if practicable. Good cause may be found where the grievances arise from the same facts, or a joint representation.

COMMITTEE NOTE: Rule 1.12(b) reflects the belief

of the Committee that absent good cause each Grievant receive consideration of his grievance(s) separate and apart from the grievance(s) of any other Grievant, even where the grievance of 2 or more Grievants may be against the same Respondent.

**Rule 1.13 Service of Documents.**

(a) All correspondence, documents, exhibits, briefs, or other matters submitted to the Case Investigator, or to the Panel, by the Respondent, shall be simultaneously submitted to the Grievant by the Respondent.

(b) All correspondence, documents, exhibits, briefs or other matters submitted to the Case Investigator or to the Panel by the Grievant, shall be simultaneously submitted to the Respondent by the Grievant.

(c) The Case Investigator or, in the appropriate case, the Panel Chair, shall ensure that this Rule 1.13 is complied with, and may, in connection with any violation of this Rule, require that appropriate service be performed, or may do so sua sponte.

**Rule 1.14 Statutes of Limitations Inapplicable.**

The various statutes of limitations shall not apply to grievances filed with the V.I. Bar Association.

COMMITTEE NOTE: This Rule 1.14 is consistent with

R. 32, RLDE.

**Rule 2: Duties of the Panel, the Case Investigator and the Adjudicatory Panel**

**Rule 2.1 The Panel.**

A Panel shall consist of four attorneys, all of whom shall be members of the Committee. One attorney of the Panel shall be the Case Investigator and the other three attorneys shall constitute the Adjudicatory Panel. One of the three members of the Adjudicatory Panel shall be the Panel Chair.

COMMITTEE NOTE: The three member Adjudicatory Panel under these Rules is consistent with the three member hearing committees established under Rule 3A, RLDE, although Rule 3A calls for one member of the hearing committee to be a non-lawyer. Cf R. 7.1 of these Rules, which requires membership in the V.I. Bar Association, as a prerequisite to membership in the Committee.

The case investigator's membership in the Panel, and in the Committee, is antithetical to the philosophy embodied in the RLDE, which calls for an independent and salaried disciplinary counsel. Cf. R. 4, RLDE and Commentary thereto.

**Rule 2.2 Standing and Ad Hoc Panels.**

Each Subcommittee may decide whether to have standing Panels or to create ad hoc Panels for each new grievance. In either event, the Chairman of each Subcommittee shall strive to evenly distribute, insofar as practicable, the workload

of the Subcommittee, so that all Panels, and all members of the Subcommittee, are assigned to a roughly equal number of grievances.

COMMITTEE NOTE: Permanent assignment of members to a Panel (or hearing committee, in the nomenclature of the Model Rules) is encouraged by the RLDE. Ad hoc assignments are discouraged. See Commentary to Rule 2, RLDE, Concerning assignment of members to hearing committees. (p. 8-9, 1996 ed.) Ad hoc assignments to Panels are frequently necessary, however, given the small size of the V.I. Bar and the frequency of recusals by members of the Committee.

**Rule 2.3 Appointment of Panel Chair and of Case Investigator.**

(a) The Chairman of each Subcommittee shall appoint one member of each Panel as the Chair of the Panel at the time of appointment of a standing Panel, or at the time of the assignment of a grievance to an ad hoc Panel, as the case may be.

(b) The Chairman of the Subcommittee shall promptly appoint a Case Investigator for each grievance assigned to the Panel with a copy of said appointment to the panel members, the Grievant and the Respondent. Alternatively, the Chairman may delegate this appointment to the Panel Chair, who shall promptly appoint the Case Investigator, and furnish a copy of said appointment to the Chairman, the panel members, the Grievant and the Respondent.

**Rule 2.4 The Case Investigator and the Investigation.**

(a) Upon his appointment, the Case Investigator shall promptly commence his investigation. Said investigation shall at a minimum consist of a review of the grievance and of all relevant documents, the applicable Model Rules of Professional Conduct and the Superior Court Rules, and communicating with both the Grievant and the Respondent.

(b) The Case Investigator shall attempt to obtain the cooperation of the Respondent, and in that connection may remind the Respondent of his obligations to cooperate with the Committee, and all members thereof, as required by Rule 8.1 of the Models Rules of Professional Conduct.

(c) If the Respondent fails or refuses to provide documents, or to communicate with the case Investigator, or is otherwise uncooperative in any substantial degree or fashion, the Case Investigator may cite the Respondent with a violation of Model Rule 8.1(b), or any successor thereof, in making his report to the Adjudicatory Panel.

(d) Any documents received by the Case Investigator in the course of the investigation shall be supplied to the Grievant and the

Respondent. Reasonable costs of copying may be required.

COMMITTEE NOTE: Rule 2.4(c) is consistent with Rule 9A(1), RLDE. See Commentary to Rule 9 (p. 24, 1996 ed.)

AMENDMENT NOTE: Subsection (d) to this Rule was proposed in the amendment process prior to the Committee's vote on the Rules. The amendment was proposed "to make it clear that all parties would receive copies of all documents obtained during the investigation. This will add to the fairness of the proceedings." The proposed amendment passed by majority vote of the Committee, and was added to these Rules.

**Rule 2.5 The Case Investigator's Report.**

The Case Investigator shall submit his report in writing to the other members of the Panel constituting {øf} the Adjudicatory Panel within ninety (90) days of his appointment. The report shall state the documents reviewed, the persons interviewed, and the Case Investigator's conclusions as to whether there is probable cause to believe that a violation of any of the Rules of the Model Rules of Professional Conduct has occurred; and if so, whether it is a violation which merits a hearing, or other possible disposition; and, if not, whether the grievance should be dismissed. Attached to the report shall be the grievance, all attachments thereto, and any other pertinent documents reviewed by the Case

Investigator in preparing his report. The Case Investigator's report shall be confidential; it shall be and remain the work product of the Committee; and it shall not be disclosed to either the Grievant or the Respondent.

**Rule 2.6 The Adjudicators Panel; Powers of the Chair; Majority Vote.**

(a) The Panel Chair shall call and preside at all formal and informal meetings of the Panel, and at all proceedings conducted by the Panel, and shall rule on all objections. The Chair may delegate any assignment, or any other work, to any of the other members of the Panel. Decisions by the Adjudicatory Panel: (1) to stay or transfer a grievance; (2) to hold a hearing; and/or (3) all decisions on the disposition of the case, shall be by majority vote. All other decisions may be made by the Panel Chair solely; or in the Chair's discretion, by a majority vote of the Adjudicatory Panel, after the Chair's referral to same for a vote.

COMMITTEE NOTE: The requirement for a majority, as opposed to a unanimous, vote by the Panel's members is consistent with R. 3C, RLDE.

**Rule 2.7 The Preliminary Meeting of the Adjudicatory Panel.**

(a) The Adjudicatory Panel shall hold a

preliminary meeting promptly after submission of the Case Investigator's report, but in any event not later than 30 days thereafter. Said preliminary meeting shall be confidential, and neither the Respondent nor the Grievant may attend. The members of the Adjudicatory Panel may question the Case Investigator as to his findings and/or his conclusions, and may do any of the following:

1. Accept the Case Investigator's report and recommendation.

2. Reject the Case Investigator's report and recommendation.

3. Request additional documents, research, or evidence from the Case Investigator, in which event the Case Investigator shall promptly comply with the said request and he shall submit a supplemental report no later than 30 days after said request.

(b) The Adjudicatory Panel, by majority vote, may find probable cause, and require an evidentiary hearing, even if the Case Investigator has concluded that there is no probable cause for finding an ethical violation by the Respondent. Conversely, the Adjudicatory Panel, by majority vote, may find no probable cause for further

prosecution of the grievance, and may dismiss the grievance, even if the Case Investigator has come to a contrary conclusion in his report.

(c) If probable cause is found, the Panel shall convene a hearing pursuant to a Notice of Hearing, in compliance with Rule 3 of these Rules.

COMMITTEE NOTE: Rules 2.7(b) and (c) are inconsistent with the Commentary to R. 3 of the RLDE, which require that after the Chair of one hearing committee has found probable cause, that the grievance be assigned a second hearing committee for hearing and disposition. The Ethics & Grievance Committee believes that such a reassignment would produce great delays, and would seriously and intolerably burden the Committee's members by requiring 2 standing Panels, of 4 members each, to become familiar with the facts and issues of each grievance.

**Rule 2.8 Subpoenas.**

(a) At any point in the Committee's proceedings, the Case Investigator may cause to be issued a subpoena for the attendance of witnesses at the Panel Hearing, or a subpoena duces tecum for the production of documents, either in advance of the Panel hearing or for the Panel hearing (collectively, or individually, "subpoena"), either sua sponte or, at the request of the Grievant or Respondent. Any such subpoena shall be issued in the name of the Committee and shall be captioned "In re Ethics & Grievance Committee, No [docket number]", so as to preserve the

confidentiality of the Committee's proceeding. Witness and mileage fees shall be paid by the person requesting the subpoena at the rate which then prevails in the Superior Court.

(b) Any documents received by the Case Investigator pursuant to the subpoena shall be made available for inspection and copying to the Grievant and the Respondent. Reasonable costs of copying may be required.

(c) No subpoena shall be issued for documents protected by the attorney-client privilege, without the consent of the client in writing. No other privilege, such as work product privilege, will be grounds for opposing the subpoena.

(d) A Respondent may seek a protective order from the Adjudicatory Panel with respect to any subpoena issued by a Case Investigator. The grounds for protection shall be stated with particularity. All such requests shall be ruled on promptly.

(e) The Committee may enforce its subpoena in the Superior Court should the Respondent, or any witness, fail or refuse to comply fully with the requests made therein.

(f) The Chairman of the appropriate Subcommittee, or the Panel Chair or Case Investigator with the

consent of the Chairman of the appropriate Subcommittee, shall brief and argue all matters pertaining to the subpoena in the Superior Court on behalf of the Committee.

COMMITTEE NOTE: The provisions of R. 2.8 are largely consistent with R. 14, RLDE.

**Rule 2.9 Depositions and Discovery.**

(a) Depositions and discovery are permitted pursuant to the provisions hereof. The abuse of discovery for delay or to overburden the process will not be permitted. The Grievant, Respondent and/or the Case Investigator may seek protective orders from the Panel Chair and same shall be liberally granted when it appears to the satisfaction of the Panel Chair that legitimate discovery needs can be accomplished with less burdensome or cumbersome methods. Disputes concerning discovery shall be determined by the Panel Chair.

(b) Depositions to preserve testimony (in the case of an infirm witness, or a witness about to leave the jurisdiction) or for discovery purposes shall be permitted in advance of a hearing. The party seeking the deposition or the Case Investigator shall give notice of the deposition

to the Case Investigator, the Respondent, and the Grievant, all of whom shall have the right to participate, to examine the witness, and to introduce documents. The party or the Case Investigator seeking the deposition shall advance the costs of same, subject to assessment or re-assessment by the Panel. In the event that a Grievant establishes to the satisfaction of the Panel Chair that he or she is without the financial resources to pay the costs of same, the Panel Chair may authorize the payment of such costs by the Committee. A subpoena to compel the attendance of witnesses required for a deposition under this rule may be issued by the Case Investigator sua sponte, or at the request of the Grievant or of the Respondent, in accordance with Rule 2.8.

(c) The parties and the Case Investigator shall comply with reasonable requests for (1) non-privileged information and evidence relevant to the charges or the Respondent and (2) other material upon good cause shown to the Panel Chair.

(d) Proceedings under these Rules are not subject to the Superior Rules of Civil Procedure regarding discovery except those relating to depositions and subpoenas, except as modified herein.

**Rule 2.10 Recusal.**

(a) A member of the Committee shall promptly recuse himself, on request of the Grievant or the Respondent, or sua sponte, on any grounds upon which a judge must recuse himself as set forth in 4 V.I.C. Section 284, or any successor thereof.

(b) A member of the Committee may sua sponte recuse himself for any reason whatsoever, whether or not it constitutes good cause, or meets the criteria of 4 V.I.C. Section 284, or any successor thereof, it being the intention of this subparagraph to give all members of the Committee unfettered discretion to recuse themselves. The recusal shall be in writing and directed to the Panel Chair. No reason need be stated for any recusal under this subsection. Ordinarily, a member of the Committee should not recuse himself simply because he is opposing counsel in one or more cases against the Respondent.

(c) A Grievant and/or a Respondent may promptly request the recusal of any members (s) of the Panel, by filing a request in writing with the Panel Chair, with copies to all members of the Panel, and the Respondent and/or Grievant, as the case may be. The reasons for the request shall be stated with particularity thereon. The member whose recusal is sought may recuse himself for the

reasons stated in the request, or for any other reason. The recusal shall be in writing and shall be directed to the Panel Chair. No reason need be stated by any member of the Committee for his recusal under this subsection.

(d) Upon the recusal of a member, the Panel Chair shall promptly notify the Chairman of the appropriate Subcommittee in writing, whereupon the Chairman shall promptly assign another member of the Committee to the place of the member so recused, The notice of recusal by the Panel Chair, as well as the assignment of another member by the Chairman, shall be served on all members of the Panel, the Grievant and the Respondent.

(e) In the event any member disagrees with a request from the Grievant or Respondent for his recusal, or in the event that there is a request that more than one member of the Panel recuse himself, the issue of recusal shall be promptly referred to a Chairman of the Committee. The Chairman to whom the issue of recusal has been referred may request additional written submissions from all sides, including affidavits. The said Chairman shall promptly decide the matter, and his decision shall be provided to the Panel Chair who shall promptly distribute same to

the member, the Grievant and the Respondent.

(f) No reason shall be given by the said Chairman if he decides in favor of recusal. If the Chairman overrules the request for recusal, the reasons shall be set forth in findings and conclusions. Alternatively, the Chairman may assign the grievance to another panel.

COMMITTEE NOTE: Rule 2.10(a) is consistent with R. 2F(1) and 3F(1), RLDE, which require board and hearing committee members to recuse themselves in any proceeding in which a judge similarly situated would recuse himself.

Rule 2.10(b) embodies the Committee's very liberal philosophy in favor of recusal. Such a philosophy is justified in view of the practical realities of the practice of law in the Virgin Islands, to wit, the familiarity of all members of the Committee with most other members of the Bar, including Respondents. Stricter or narrower standards of recusal, the Committee believes, would be inappropriate. On the other hand, the mere fact that the Respondent and one or more members of the Committee are on opposite sides in one or more cases should not ordinarily be grounds for recusal, otherwise all members of the Committee might have to routinely recuse themselves with respect to many Respondents, rendering the Committee incapable of performing its functions.

**Rule 3: Hearings Before The Adjudicators Panel; Dispositions by Consent; Immunity**

**I. Hearings**

**Rule 3.1 Notice of Hearing; Notice of No Hearing.**

(a) Every hearing shall be duly noticed in a Notice of Hearing which shall be executed and

dated by the Panel Chair, and shall be served on the Grievant and on the Respondent. The Notice of Hearing shall state:

- (1) The date, time and place of the hearing.
- (2) The relevant facts, and whether they are contested or uncontested.
- (3) The Model Rules which are, or may be, implicated by the uncontested and contested facts.
- (4) If the Case Investigator has charged the Respondent with a violation of Model Rule 8.1(b), the facts relevant to such charge shall be separately set forth, and Rule 8.1(b) shall be separately cited as being implicated.
- (5) That if the Respondent fails or refuses to appear at any hearing duly noticed and convened, without good and sufficient cause, then the hearing may be held in his absence and that the Panel may proceed to an adjudication of the grievance and the imposition of sanctions on a default basis.
- (6) That at any hearing both the Respondent and the Grievant will be given an opportunity to make opening and closing statements, to present evidence and witnesses, and to cross-

examine any and all witnesses, and that the Case Investigator may be permitted to do likewise in the discretion of the Panel.

(7) That the Grievant and the Respondent have the right to submit prehearing and post-hearing briefs to the Panel, in the event that a hearing is held.

(8) That sanctions may be imposed in accordance with these Rules. The potential sanctions which the Respondent faces in the proceeding shall be specifically enumerated in the Notice of Hearing.

Absent exigent circumstances, hearings shall be set 14 to 30 days after the date of the Notice of Hearing.

(b) If the Panel believes that the relevant facts are uncontested, it may issue a statement which shall:

(1) Identify the Model Rules(s) implicated by the grievance;

(2) State the relevant facts; and further state that it believes the relevant facts to be uncontested; and further state that there appears to be no need for a hearing because the matter may be decided on the written record;

(3) Advise the Grievant and Respondent to state in writing to the Panel if either believes that contested, relevant facts exist for which a hearing should be held;

(4) State that the Panel reserves the right to decide whether a hearing should be held after reviewing the response from the Grievant and Respondent.

Should the Panel determine that a hearing is appropriate, it shall issue a Notice of Hearing in accordance with these Rules. Should the Grievant and Respondent agree that no hearing is necessary or should the Panel determine that no hearing is necessary, the Panel shall make a determination of the grievance summarily.

(c) The Notice of Hearing or Notice of No Hearing may be served on the Grievant and Respondent in accordance with R. 1.8(c) and 1.9(b) of these Rules; or, alternatively, may be personally served or served by certified mail, return receipt requested, or by any other means reasonably calculated to provide actual notice. Copies of all Notices of Hearing and Notices of No Hearing shall be furnished to each Panel member, and to the Chairman of the appropriate Subcommittee.

AMENDMENT NOTE: Subsection (a)(8) was proposed in the amendment process prior to the Committee's vote on the Rules. The amendment was proposed to conform to the Third Circuit's recent holding in In re Tutu Wells Contamination Litigation, Nos. 96/7385-7392 (July 22, 1997) which held that attorneys facing sanctions are entitled to particularized notice of the form of sanctions which they face. The proposed amendment passed by majority vote of the Committee, and was added to these Rules.

**Rule 3.2 Investigation by Government Authorities.**

The Committee or any of its members may, at any time, advise a Grievant that he, the Grievant, may report the facts constituting his grievance to the U.S. Attorney's Office, or the Virgin Islands Department of Justice, or other appropriate authority.

COMMITTEE NOTE: This Rule is consistent with Rule 16B(4), RLDE.

**Rule 3.3 Continuances of Panel Hearing.**

(a) Requests for a continuance of a Panel hearing shall not routinely be granted, but shall be granted only for good cause. Requests for continuance shall be served on the Panel Chair who shall rule on all such requests.

(b) If the Respondent fails to appear for the Panel hearing, the hearing shall be held in his

absence. At such hearing, the Respondent shall be deemed to have admitted all factual allegations contained in the grievance, and to have waived his right to object to the imposition of sanctions in accordance with these Rules and the ABA's Standards for Imposing Lawyer Sanctions.

COMMITTEE NOTE: This Rule 3.3(b) is consistent with R. 33B of the RLDE. See also R. 1.11 of these Rules.

**Rule 3.4 Panel Hearings to be Transcribed.**

All Panel hearings shall be held on the record before a certified court reporter.

COMMITTEE NOTE: This Rule 3.4 is consistent with R. 18F, RLDE.

**Rule 3.5 Witnesses at Panel Hearings.**

(a) All witnesses shall swear or affirm as if in Court.

(b) (1) Any witness, including the Grievant and Respondent, may testify by telephone if he is not then present in the Virgin Islands, or is otherwise unavailable to be present at the hearing.

(2) If a judge of any court is a Grievant, or a witness, the judge's testimony may be taken by telephone, if the judge so requests, or if the Panel so decides in the interest of justice.

(3) A notary shall swear any witness whose testimony is taken by telephone, other than a Respondent, a member of the Virgin Islands Bar, or any judge who may affirm the truthfulness of his own testimony under penalty of perjury. Said notary shall be physically present in the same location as the witness, and shall verify on the record said witness' identity, based on appropriate identification supplied to said notary.

**Rule 3.6 Order of Hearing.**

(a) The Case Investigator shall present the case to the Adjudicatory Panel. In the discretion of the Panel, the Case Investigator may make opening statements, examine and cross examine witnesses, introduce evidence, and make a closing statement.

(b) The Grievant and the Respondent shall each be entitled to make an opening statement, to examine and cross-examine witnesses, to introduce evidence, and make a closing statement, in that order.

**Rule 3.7 Examination of Witnesses.**

All members of the Adjudicatory Panel shall be entitled to question the Grievant, the Respondent,

and all witnesses.

**Rule 3.8 Examination of the Case Investigator.**

The Case Investigator shall not testify, and shall not be subject to cross-examination, unless he has cited the Respondent for a violation of Model Rule 8.1(b), in which event, direct and cross examination of the Case Investigator shall be strictly limited to the facts relevant to the Rule 8.1(b) violation. The direct examination of the Case Investigator shall be conducted by the Panel Chair, or by another member of the Adjudicatory Panel designated by the Chair.

**Rule 3.9 Rules of Evidence.**

The Adjudicatory Panel shall be guided by, but shall not be bound by, the Federal Rules of Evidence. Hearsay evidence, and nonauthenticated documents, may be admitted, if reliable.

**Rule 3.10 Deliberations of The Adjudicators Panel.**

The Case Investigator shall not participate in any of the deliberations of the Adjudicatory Panel after the hearing, or in the decision by said Panel.

**Rule 3.11 Decision Making by the Adjudicatory Panel.**

The Adjudicatory Panel shall deliberate immediately after the hearing and shall promptly reach a conclusion.

**Rule 3.12 Composition of the Adjudicatory Panel at the Hearing.**

A hearing may be held if 2 of the 3 members of the Adjudicatory Panel are present. In such circumstances, the third member shall be provided with a copy of the transcript or tape recording, and all documents which were received, and shall take part in the deliberations and vote of the Panel.

COMMITTEE NOTE: R. 3.12 is inconsistent with R. 18H, RLDE, to the extent that R. 18H authorizes hearings before a single adjudicator on charges of "lesser misconduct. " The Committee believes that in this jurisdiction, where most members of the Committee personally know most Respondents, that (1) it is unfair to ask any single member of the Committee to take full responsibility to decide any grievance as the sole adjudicator, no matter how minor the misconduct, and (2) that Respondents should be, and are, entitled to the full benefit of a 3-member panel of the Committee, coupled with the liberal recusal provisions set forth in Rule 2.10 herein.

**II. Dispositions by Consent**

**Rule 3.13 Offer to Consent.**

(a) In lieu of proceedings under these Rules, a Respondent at any time may offer to consent to the entry of specified sanctions being entered against

him by a written Offer to Consent. The Offer to Consent shall:

- 1) Identify the Rule(s) of the model Rules of Professional Conduct which the Respondent admits he has violated; and
- 2) State the specific sanction consented to.

(b) The Offer to Consent shall be on a form prescribed by the Committee, a copy of which is attached as Form 1 to the Rules. In addition, the Respondent shall explicitly waive all of his rights under these Rules, which waiver shall be effective for all purposes if the Offer to Consent is accepted by the Adjudicatory Panel, and if approved by the Court, where necessary.

(c) The Offer of Consent shall be served on the Case Investigator. If the Case Investigator agrees that the Rule(s) identified in the offer to Consent have been violated by the Respondent, and that the sanctions specified by the Respondent are just and appropriate under the circumstances, and if the Offer to Consent is properly executed and otherwise in good form, he shall countersign the Offer to Consent, and forward same along with any other pertinent materials to the Adjudicatory Panel.

**Rule 3.14 Acceptance of Offer to Consent; Rejection of Same.**

(a) If a majority of the Adjudicatory Panel agrees with the Case Investigator then, on behalf of the Committee, they shall accept the Offer to Consent and shall countersign same. The duly-executed and countersigned Offer to Consent shall be forwarded by the Chair of the Adjudicatory Panel to the Subcommittee Chairman for forwarding to the Executive Director for docketing. The accepted Offer to Consent shall not require the approval of the Court except in the circumstances set forth in Rule 3.15.

(b) In considering the Offer to Consent, the Adjudicatory Panel shall communicate with the Case Investigator, and may review such documents as they may deem necessary or appropriate.

(c) If a majority of the Adjudicatory Panel rejects the Offer to Consent, they shall notify the Case Investigator and the Subcommittee Chairman in writing and the grievance shall then proceed in accordance with these Rules. The majority of the Adjudicatory Panel may, but is not required to, indicate those terms, conditions and sanctions which they would approve and accept.

(d) A new Offer to Consent may be submitted by

the Respondent for consideration and acceptance by the Adjudicatory Panel, even though a prior offer to Consent was rejected.

(e) The Respondent shall not communicate with the Adjudicatory Panel while an offer to Consent is under consideration, except in writing through the Case Investigator.

**Rule 3.15 Court Approval of Offer to Consent.**

(a) Where the sanction specified is probation, suspension or disbarment, the Offer to Consent, if accepted by the a majority of the Adjudicatory Panel, shall be subject to approval by the Court. A Petition for Disciplinary Action Based on Consent shall be filed with the Court, and a copy of the duly executed and countersigned Offer to Consent shall be attached thereto. Where the sanction consented to is disbarment, the Respondent shall, in addition, execute an affidavit in conformity with Rule 303(g) of the Superior Court Rules, or any successor thereof.

(b) In the initial filing of the offer to Consent with the Court, the Committee shall be obligated to advise the Court of any consideration offered to, or accepted by, the Committee in exchange for the Offer to Consent, including the dismissal of

any pending grievances, or any agreements reached respecting the terms or conditions of probation, or the Respondent's readmittance to the Bar.

(c) If the Court approves the Offer to Consent, it shall become effective immediately upon approval, and the record shall reflect that the Respondent was placed on probation on consent, or suspended on consent, or disbarred on consent, as the case may be.

**Rule 3.16 Disapproved Offer to Consent.**

If the Court disapproves the Offer to Consent, the Chairman shall immediately notify the Case Investigator in writing, who shall promptly seek disposition of the grievance by the Panel to which it is assigned in accordance with these Rules.

**Rule 3.17 Inadmissibility of Rejected or Disapproved Offer to Consent.**

The Offer to Consent, if rejected by a majority of the Adjudicatory Panel, or disapproved by the Court, shall not be admissible against the Respondent in any future proceedings before the Adjudicatory Panel, the Committee or the Court.

**Rule 3.18 No Limitation on Power of the Court.**

Nothing herein shall be construed to limit or deny

the power of the Court to fashion such orders, or to accept such consent decrees, as it may deem just during or as a result of any hearing on an Offer to Consent which has been accepted by a majority of the Adjudicatory Panel.

AMENDMENT NOTE: The current version of Rules 3.13 - 3.18 were proposed in the amendment process prior to the Committee's vote on the Rules. The intent of the amendment was to direct that decisions with regard to Offers to Consent rest with the Adjudicatory Panel, and not the Chairman of the Committee, as the original version of these Rules had provided. The current version of Rules 3.13 - 3.18 passed by majority vote of the Committee, and they were added to the Rules.

**III. Immunity**

**Rule 3.19 Immunity.**

(a) All Grievants, witnesses, attorney-trustees appointed under R. 5.6 of these Rules, and all members of the Committee, shall enjoy absolute immunity from suit from any oral or written statements made in connection with the filing or maintenance of a grievance, or the investigation thereof, or the hearing thereon, or an adjudication thereof, or proceedings on an Offer to Consent.

(b) All members of the Committee shall enjoy absolute immunity from suit for any statements made, or any conduct or action taken during, or in

the course of, any Committee business, or pursuant to these Rules.

COMMITTEE NOTE: This Rule 3.19 is consistent with R. 12, RLDE.

**Rule 4. Decisions of The Adjudicatory Panel; Sanctions; Disposition Forms**

**Rule 4.1 Applicability of ABA Standards for Imposing Lawyer Sanctions.**

The Committee is guided by the American Bar Association's Standards for Imposing Lawyer Sanctions, and may only deviate from those Standards for good cause.

**Rule 4.2 Decisions to Dismiss.**

If the Adjudicatory Panel decides to dismiss the grievance, it may, but it is not required to, render a Memorandum of its decision.

**Rule 4.3 Decisions to Impose Sanctions.**

(a) If the Adjudicatory Panel decides to impose any sanction, it must render a Memorandum of Decision. The Memorandum shall set forth the findings of fact and the conclusions of the Adjudicatory Panel, and shall separately set forth each Model Rule found to have been violated by the Respondent. Further, it shall set forth the sanction to be imposed on the Respondent

specifying the mitigating and aggravating factors, if any, in accordance with the ABA's Standards for Imposing Lawyer Sanctions. If there is a dissent, it may be set forth in the Memorandum of Decision, along with the reasons therefor.

(b) The sanctions which the Adjudicatory Panel may impose, or conditionally impose, without the consent of the Respondent are as follows:

(I) Without Court Order:

- 1) Private Reprimand;
- 2) Public Reprimand;
- 3) Restitution to the Grievant;
- 4) Continuing Legal Education;
- 5) Taking and passing the Multistate Professional Responsibility Exam;
- 6) Costs of the grievance.

(II) With Court Order:

- 1) Probation, not to exceed three (3) years, with conditions and with apprenticeship and supervision under another member of the bar in good standing who has no current grievances pending against him, and who has not previously been suspended or disbarred in this or any other jurisdiction, who shall

monitor and report on the Respondent's compliance with the conditions of probation;

2) Suspension, for any period of time, not to exceed three (3) years, which may be conditional or unconditional;

3) Disbarment, which may be conditional or unconditional.

(c) The Court may impose any sanction set forth in the preceding paragraph 4.3(b) with the exception of a Private Reprimand.

(d) (i) In the event the Adjudicatory Panel orders a public reprimand under subsection (b)I(2) of this Rule, it shall prepare a Notice of Public Reprimand which shall state:

(1) The name and address of the Respondent;

(2) The fact and the date of the Public Reprimand;

(3) The underlying facts meriting the public reprimand shall be briefly stated;

(4) The Model Rule(s) found to have been violated shall be set forth.

Said Notice shall be published in a newspaper of

general circulation in a manner reasonably designed to give the public notice, promptly after the Panel's decision becomes final.

(ii) In the event the Adjudicatory Panel orders either a public or private reprimand, it may elect to schedule a separate Reprimand Meeting at which it shall orally reprimand the Respondent. The Grievant shall be given prior notice of same, and shall be allowed to attend. The Reprimand Meeting shall be public if the reprimand is public.

COMMITTEE NOTE: The publication in a newspaper of general circulation of a Notice of Public Reprimand is consistent with R. 10A(4), RLDE.

**Rule 4.4 Clear and Convincing Evidence.**

No sanction may be imposed unless the Adjudicatory Panel finds by clear and convincing evidence that a violation of the Model Rules of Professional Conduct has occurred.

COMMITTEE NOTE: This Rule 4.4 is consistent with R. 18C, RLDE.

**Rule 4.5 Prior Record of the Respondent.**

Information concerning the prior criminal convictions and prior grievance discipline against the Respondent shall not be

considered in determining whether a violation of the Model Rules of Professional Conduct has occurred. Only in deciding the appropriate sanctions to be imposed the Adjudicatory Panel may consider prior criminal convictions and prior adjudicated grievances of the Respondent, in which case it shall specify in its Memorandum of Decision those matters which it considered, and it shall attach copies thereof to its Memorandum of Decision. The Panel may not consider pending grievances against the Respondent.

COMMITTEE NOTE: This Rule 4.5 is consistent with R. 11D(5), RLDE.

**Rule 4.6 Disposition Form.**

Every disposition shall be evidenced by a Disposition Form, a copy of which is attached as Form 2 to these Rules. The Disposition Form may be modified as experience dictates, but it shall contain at a minimum the information contained in Form 2.

**Rule 4.7 Execution of Disposition Form.**

Every Disposition Form shall be executed by each

of the 3 members of the Adjudicatory Panel, and each member shall date his signature and print his name beneath his signature. If one member dissents, the dissent may be noted thereon.

**Rule 4.8 Countersignature of The Disposition Form by The Chairman.**

(a) The original of every Disposition Form shall be submitted by the Panel Chair to the Chairman of the Subcommittee for counter-signature. The Chairman shall execute the Disposition Form, and date same, if (i) the Panel is duly constituted; (ii) all members of the Panel have executed the Disposition Form and dated same; (iii) the names of each member of the Panel is legibly set forth thereon in type or print beneath his signature, and (iv) the Disposition Form is otherwise in good form, and in accordance with these Rules, and the Model Rules of Professional Conduct and the American Bar Association's Standards for Imposing Lawyer Sanctions.

(b) The Chairman may return the Disposition Form to the Panel for re-execution, or additional action, if the Disposition Form does not meet the requirements of subsection (a) of this Rule.

**Rule 4.9 Docketing and Dissemination of The Disposition Form.**

(a) The original of every Disposition Form countersigned by the Chairman, along with any Memorandum of Decision, shall promptly be forwarded by the Chairman for docketing to the Executive Director of the Virgin Islands Bar Association, with copies served on the Grievant and the Respondent in accordance with Rule 3.1(c).

(b) Said Disposition Form also shall be forwarded by the Chairman to the appropriate disciplinary agency and the highest court of every other jurisdiction in which the Respondent is admitted, and the National Discipline Data Bank, maintained by the American Bar Association, as appropriate.

COMMITTEE NOTE: This Rule is consistent with R. 16I and 17A of the RLDE.

**Rule 4.10 Requisites for Docketing.**

No disposition Form may be accepted for docketing by the Executive Director unless it is an original, and is counter signed by the Chairman of the appropriate Subcommittee.

**Rule 4.11 Finality of Adjudicatory Panel Decisions; Appeals by Grievants.**

(a) A decision shall become final forty-five (45) days after the countersignature thereon by the Chairman.

(b) No appeal may be prosecuted by any Respondent more than forty-five (45) days after the countersignature by the Chairman of the Panel's decision.

(c) Grievants may not appeal decisions of the Committee or of any of its Panels.

COMMITTEE NOTE: The 45-day period allowed in R. 4.11(b) for an appeal by a Respondent is consistent with Terr. Ct. R. 303(k)(1).

COMMITTEE NOTE: Rule 4.11(c) is inconsistent with Rule 31, RLDE. The Committee believes that the Grievant is not the "real party in interest" to the grievance, and thus lacks standing to complain about, or to appeal, the Committee's decisions. Rather, the grievance is the vehicle by which issues and facts concerning a lawyer's fitness to practice law are brought to the Committee's attention, and it is the Committee, as the duly authorized representative of the Court, which is the real party in interest in all grievance proceedings.

The Grievant's legal remedies, if any, against the Respondent, are strictly speaking a matter for the courts, not the Committee, although the Committee will strive to obtain restitution for a Grievant, where and to the extent appropriate.

**Rule 4.12 Reconsideration of Adjudicatory Panel Decisions.**

(a) Requests for reconsideration of an Adjudicatory Panel's decision may be considered if filed within ten (10) business days of receipt of the Panel's decision. The grounds for the reconsideration shall be set forth with particularity.

(b) Copies of a request for reconsideration shall

be served on the Grievant, the Respondent, each member of the Panel, and the Chairman who executed the Disposition Form.

(c) A request for reconsideration shall not stay the docketing of the Panel's decision. However, the time for appeal is tolled during the pendency of any request for reconsideration. No appeal or petition for disciplinary enforcement shall be filed in court until the motion for reconsideration is ruled on by the Panel.

(d) The Adjudicatory Panel shall promptly rule on all requests for reconsideration. The Adjudicatory Panel may, but is not required, to hold hearings or to make additional findings of fact or conclusions of law.

(e) If the Adjudicatory Panel grants the reconsideration, then it shall specify what, if any, future actions or hearings must be taken, and it may, if appropriate, withdraw the original decision. Any such withdrawal shall be countersigned by the Chairman, and docketed by the Executive Director, in accordance with these Rules.

(f) if the Adjudicatory Panel denies the reconsideration, the decision is final upon the countersignature and the mailing of same by the

Chairman, and the Respondent's time for appeal shall be forty-five (45) days from the date of said countersignature.

COMMITTEE NOTE: With respect to Rule 4.12(f), see Committee Note regarding R. 4.11(b) commenting on the 45 day period for appeals by a Respondent.

**Rule 5. Duties of The Chairman; Duties of the Respondent; Duties of the Attorney-Trustee.**

**Rule 5.1 Preparation of The Petition for Disciplinary Action.**

(a) The Chairmen of the Committee shall act as counsel for the Committee. Each Chairman is authorized to and, by agreement between them, one of the Chairman shall, prepare each petition for disciplinary action for filing with the Superior Court in cases where the sanction sought is probation, suspension or disbarment according to the Rules of the Superior Court. A copy of the grievance, the Panel's Notice of Hearing, or Notice of No Hearing, the transcript of the Panel's hearing, if any, the Panel's Memorandum of Decision, and the Disposition Form shall, in all cases, be included as exhibits to the Petition, and served on the Respondent.

(b) Except for Emergency Petitions for Interim Suspension, as provided under Rule 6.20 of these Rules, no petition for disciplinary action shall be filed in Court until the Adjudicatory Panel's

decision has become final, in accordance with Rules 4.11 and 4.12 of these Rules.

**Rule 5.2 Presentation of Petition to the Court.**

The Chairman, or any member of the Committee specially designated in writing by the Chairman, shall present the case to the Superior Court. All members of the Committee shall assist and provide reasonable cooperation with the Chairman's presentation.

**Rule 5.3 Sanctions Sought.**

The Chairman shall seek such sanctions against the Respondent in the Superior Court as determined by the Adjudicatory Panel. Any dissent as provided by Rule 4.3(a) shall be brought to the attention of the Court.

**Rule 5.4 Publication of Sanctions.**

The Chairman shall take all steps necessary to assure that notice of any Court-ordered sanction, and the specific terms thereof, shall be published in a newspaper of general circulation in the U.S. Virgin Islands.

COMMITTEE NOTE: The publication of a Court-ordered sanction in a newspaper of general circulation is consistent with R. 17B, RLDE.

**Rule 5.5 Duties of Respondent Following Court-Ordered Sanctions.**

(a) All Orders of the Court imposing disbarment, suspension, or probation with the requirement of an apprenticeship shall be effective on a date fifteen (15) days after the date of the order, except where the Court finds that immediate disbarment or suspension is necessary to protect the public.

(b) Unless otherwise ordered by the Court, it shall be the duty of all Respondents who are disbarred, suspended for any period of time (including interim suspensions), or placed on probation with a requirement of an apprenticeship, to serve a Notice of Court-Ordered Sanctions on all clients, co-counsel, opposing counsel (or, in the absence of opposing counsel, the adverse party) and all courts and agencies before which the Respondent is practicing or appearing, of the fact of the sanction imposed, and to enclose with such Notice a copy of the Court's Order imposing sanctions. Said Notice of Court-Ordered Sanctions shall be provided within ten (10) days of the effective the date of the Court's Order, on a form to be provided the Respondent by the Committee, a copy of which is attached to these Rules as Form 3. All notices to clients under this Rule shall be

by certified mail, return receipt requested.

(c) The Court may direct the issuance of notice to such financial institutions or others as may be necessary to protect the interests of clients or other members of the public.

(d) The Respondent shall keep and maintain records of the steps taken to accomplish the requirements of paragraphs 5.5(b) and (c) and shall make those records available to the Court or the Ethics and Grievance Committee.

(e) Unless otherwise ordered by the Court, upon receipt of the Court's Order of sanctions, the Respondent shall: (1) if he is disbarred or suspended, immediately cease and desist from taking any new clients, or accepting any new matters or assignments, or accepting any retainers for future work from existing clients; or, (2) if he is placed on probation, immediately begin complying with all terms thereof.

(f) Unless otherwise ordered by the Court, within ten (10) days of the effective date of said order, Respondent shall, if the sanction is disbarment or a suspension of more than six (6) months:

1) Move to withdraw from all courts or agencies in which he has appeared;

2) Refund and/or return to all clients

and/or third parties fees which have not earned, monies or other property held in trust, and all files and/or other property of whatever nature, whether held in trust or not.

(g) Unless the Order of sanctions is stayed, the Respondent shall, within ten (10) days of the effective date of the Court Order of sanctions, execute an Affidavit, and serve same upon the Court and the Committee, which:

1) Attests that there has been full and complete compliance with these Rules, or alternatively, specifies what future actions need to be taken;

2) Provides an address where the Respondent may be served, and a telephone number where he may be reached;

3) Provides the name and address of each client of the Respondent, and copies of the return receipts evidencing mailing under this Rule;

4) Provides the name and address of all banks where the Respondent has had any operating, office, business, trust or escrow accounts during the three (3) years immediately preceding the Court's Order of sanctions, the account number of each said account, and the purpose thereof.

(h) The filing of an appeal from the Order of

sanctions shall not, without more, stay the requirements of this Rule unless the Court specifically grants a stay of the Court's Order imposing sanctions, or a stay of the Respondent's duties under this Rule.

COMMITTEE NOTE: This Rule 5.5 is consistent with R. 27, RLDE.

AMENDMENT NOTE: Amendments to Rule 5.5(a)-(c) were proposed prior to the Committee's vote on the Rules, to provide "[u]nless otherwise ordered by the Court" at the beginning of each of the three subsections, and to impose the obligations set forth in subsection (c) for suspensions "of more than six months." The amendments were proposed to make it clear that this Rule would "not interfere with the Court's discretion in fashioning the appropriate sanction. Particularly, if the Court elected to impose a short suspension, some of the notice requirements of this Rule would be unduly burdensome without the option for the Court to waive the requirements." The amendments to Rules 5.5(a)-(c) were passed by majority vote of the Committee, and they were added to the Rules.

**Rule 5.6 Appointment of Attorney-Trustee; Duties of Same.**

Upon the failure or refusal of the Respondent to discharge his duties under Rule 5.5 of these Rules, the Committee shall petition the Court to appoint an attorney-trustee to collect and inventory the files and/or bank records of the Respondent, and to take such other, further action, as the Court Orders.

COMMITTEE NOTE: This Rule 5.6 is consistent with R. 28A, RLDE.

**Rule 5.7 Attorney-Client Privilege Attaches to Attorney-Trustee.**

The attorney-client privilege shall apply to the attorney-trustee who has been ordered to inventory the Respondent's files, and no proceeding may be had to compel said attorney-trustee to reveal any client confidences learned during his examination and inventory of the client files.

COMMITTEE NOTE: Rule 5.7 is consistent with R. 28B, RLDE.

**Rule 6: Miscellaneous Matters: Stays; Transfers; Special Panels; Fee Mediation; Emergency Petitions for Immediate Interim Suspension; In Re [Respondent] Matters.**

**I. Stays**

**Rule 6.1 Grounds for Stay.**

A grievance may be stayed in the following circumstances:

(1) There is a pending civil or criminal action in a court of record, or an administrative proceeding, involving the Grievant and Respondent and substantially the same issues as those raised by the grievance ("related proceeding"); or

(2) For good cause.

COMMITTEE NOTE: This Rule 6.1 is consistent with R. 18G, RLDE.

**Rule 6.2 Decision to Stay.**

When a grievance is stayed, the Adjudicatory Panel shall execute a Disposition Form which shall be countersigned by, the Chairman of the appropriate Subcommittee, and filed with the Executive Director of the Virgin Islands Bar Association, in accordance with these Rules. Copies of the Disposition Form shall be furnished to the Grievant and the Respondent in accordance with these Rules.

**Rule 6.3 Semi-Annual Reports.**

It shall be a requirement of all stays that the Grievant and the Respondent file a report with the Panel Chair at least every 6 months, setting forth the status of the related proceeding, if any, or justifying the good cause, and advising whether the grievance should continue in stay status.

**Rule 6.4 Lifting of Stay.**

If it should appear that the reasons for the stay no longer exist, or that there is good cause to lift the stay, or if the Grievant and/or Respondent fails or refuses to file status reports, the Panel shall promptly proceed to reactivate the grievance, giving notice of its action to the Grievant, the Respondent, the

Chairman of the appropriate Subcommittee and the Executive Director of the Virgin Islands Bar Association. In such circumstances, the Panel shall proceed to prompt disposition of the grievance, in accordance with these Rules.

## **II. Transfers.**

### **Rule 6.5 Grounds for Transfer.**

For good cause shown, or for the convenience of the Grievant the Respondent, or of witnesses, the grievance may be transferred from one Subcommittee to the other, upon the recommendation of the Panel Chair, and with the concurrence of the Chairman of the appropriate Subcommittee.

### **Rule 6.6 Respondent is Member of the Committee.**

In cases where the Respondent is a member of one of the Subcommittees, the grievance shall be transferred to the other Subcommittee.

### **Rule 6.7 Grievant is Member of the Committee.**

In cases where the Grievant is a member of one of the Subcommittees the grievance shall be transferred to the other Subcommittee.

COMMITTEE NOTE: These Rules 6.6 and 6.7 are consistent with the philosophy set forth in R. 18K, RLDE.

**Rule 6.8 Venue of Hearing of Grievance Transferred Under Rule 6.6 or 6.7.**

The Adjudicatory Panel to whom a grievance has been transferred under Rules 6.6 or 6.7 shall hold any hearing, if one is necessary, in the district in which such hearing would have been held if there had been no transfer under this Rule, unless otherwise agreed by the Grievant and the Respondent.

**Rule 6.9 Procedures Governing Transfers.**

The procedure set forth in Rule 1.6(b) of these Rules shall be followed in all cases of transfer.

**III. Special Panels.**

**Rule 6.10 Appointment and Composition of Special Panels.**

(a) In cases where the Grievant and the Respondent are members of different Subcommittees, a Special Panel of 4 shall be chosen, consisting of 2 members of each Subcommittee, to be chosen by the respective Chairman. The Panel Chair shall be the member with the most seniority; or if there is no one member with seniority, then the Panel Chair shall be chosen by lot. The Case Investigator shall not be from the same Subcommittee as the Panel Chair. The Chairmen of the Committee shall

be ineligible to serve on the Special Panel.

(b) If any hearings are held, they shall be held in the district in which the Respondent maintains his principal office.

**Rule 6.11 Administrative Suspension of Committee Members.**

(a) In the event any member of the Committee is found to be in violation of a Model Rule, which merits suspension or disbarment,

(1) He shall automatically be suspended as a member of the Committee, and all matters then-pending which are assigned to him shall be reassigned, and

(2) The Petition for Disciplinary Action shall be filed by the Chairman of that Subcommittee of which the Respondent is not a member.

(b) In the event any member of the Committee is found to be in violation of a rule meriting a lesser sanction, the Respondent may be suspended as a member of the Committee by majority decision of the Chairmen en banc. Should there not be a majority, the President of the V.I. Bar shall specially act as a Chairman for purposes of this section.

COMMITTEE NOTE: Rules 6.10 and 6.11 are generally

consistent with the philosophy of R. 18K, RLDE.

**IV. Fee Mediation.**

**Rule 6.12 Consent to Fee Mediation.**

(a) Where the grievance consists essentially of a dispute over a fee, the grievance may, with the written consent of the Grievant and Respondent, be referred by the Panel to fee mediation.

(b) The Grievant and Respondent shall execute the Fee Mediation Referral Form, a copy of which is attached as Form "4" to these Rules.

(c) Copies of the Fee Mediation Referral Form shall be furnished to all members of the Panel, and to the Chairman of the appropriate Subcommittee.

**Rule 6.13 Fee Mediators.**

At least four members of each Subcommittee shall be designated each year as the Subcommittee's "fee mediators." The fee mediators may not charge for their services.

**Rule 6.14 Assignment to Fee Mediators.**

The fee mediator may not be a member of the Panel to which the grievance has been assigned.

**Rule 6.15 Confidentiality of Fee Mediation.**

All discussions preceding and during fee mediation shall be strictly confidential.

**Rule 6.16 Successful Fee Mediation.**

If the fee mediation is successful, the fee mediator shall so state in his report to the referring Panel, and the grievance shall thereafter be dismissed.

**Rule 6.17 Unsuccessful Fee Mediation.**

If the fee mediation is unsuccessful, the fee mediator shall so state, and he shall refer the matter back to the referring Panel, which shall promptly adjudicate same.

**Rule 6.18 Fee Mediation Procedure.**

Two hours shall be allotted for a fee mediation. The fee mediator may, in his discretion, terminate any mediation at any time should it appear to him that either, or both, of the Grievant or Respondent are not proceeding in good faith. The fee mediator may, in his discretion, but he is not required to, extend the mediation beyond two (2) hours if there has been substantial progress in the mediation and should it appear that a successful mediation is probable.

**Rule 6.19 Fees for Fee Mediation.**

There shall be no charge for any fee mediation.

**V. Emergency Petitions for Immediate Interim Suspension.**

**Rule 6.20 Standards for Emergency Petitions for Immediate Interim Suspension; Notice to the Respondent.**

(a) Upon the filing of a grievance, any Chairman of the Committee may, in addition to assigning the grievance to a Panel for disposition in accordance with these Rules, file an Emergency Petition for Immediate Interim Suspension with the Court upon a showing that:

1) there is prima facie evidence that the Respondent has violated the Model Rules of Professional Conduct, such that the sanction of suspension or disbarment appears highly likely, and either

2) it is highly likely that the Respondent poses an imminent threat of continuing or future harm or injury to a client, the public, the profession, or the administration of justice, or

3) the Respondent has abandoned his clients, the practice of law, or his office.

(b) The Chairman shall attempt to provide notice to the Respondent of the Emergency Petition for Immediate Interim Suspension, which notice may be

made by telephone or telecopier, or by any other informal means reasonable under the circumstances. The Chairman shall certify to the Court all attempts to provide notice to the Respondent.

**Rule 6.21 Order of Immediate Interim Suspension.**

Upon the presentation of appropriate evidence, the Court may enter an order immediately suspending the Respondent pending final determination of the grievance by the Committee. The Court may, in addition, appoint an attorney-trustee to collect and inventory the Respondent's files and bank records in accordance with Rules 5.6 and 5.7 of these Rules.

**Rule 6.22 Dissolution of The Order of Immediate Interim Suspension.**

A Respondent may at any time, move for dissolution of an Order of Immediate Interim Suspension.

COMMITTEE NOTE: Rules 6.20 - 6.22 are consistent with Rule 20, RLDE.

**Rule 6.23 Panel Proceedings.**

The Panel to which a grievance has been assigned which is the subject of an Emergency Petition for Immediate Interim Suspension, or of an Order for

Immediate Interim Suspension, shall advance the consideration and disposition of such grievance on its calendar, and shall render a decision on such grievance with all deliberate speed in accordance with these Rules.

**Rule 7: The Committee and its Subcommittees.**

**Rule 7.1 Eligibility for Appointment to The Committee.**

(a) The Committee shall be composed of members in good standing of the V.I. Bar Association appointed by the President of the V.I. Bar Association, and approved by the Presiding Judge of the Superior Court. Appointments of members shall be for one (1) year, subject to reappointment.

(b) No attorney shall be eligible for appointment as a member of the Committee unless he shall:

(1) have practiced law for not less than five (5) years immediately prior to his appointment, of which not less than three (3) years shall have been in the Virgin Islands;

(2) not have any grievance then-currently pending against him in the Virgin Islands, or in any other jurisdiction;

(3) not have any adjudication against him,

from any disciplinary authority in any jurisdiction, which imposed the sanction of suspension or disbarment;

- (4) not have any felony conviction against him in any jurisdiction for a "serious crime," as defined in Rule 3.2(b)(ii).

All members shall, as a precondition to their appointment, execute and verify a Disclosure Statement with respect to the above, a copy of which is attached as Form 5 to these Rules.

(c) Subsection (b) (2) of this Rule shall not apply to reappointments to the Committee.

(d) Members of the Committee shall fulfill their obligations to accept appointments of indigent clients by their work for and on behalf of the Committee. Members of the Committee shall not be appointed to any criminal, domestic, or other cases by the Courts of the Virgin Islands during the period of their Committee membership, provided, however, that all members shall complete all assignments and cases to which they previously have been appointed.

COMMITTEE NOTE: It is the intent of Rule 7. 1 (c) that a member of the Committee not be rendered automatically disqualified for reappointment to the Committee solely on the grounds that a grievance has been filed against him during his tenure on the Committee. A contrary rule would lead to a situation where a Committee member would be vulnerable to automatic disqualification from

the Committee by the mere filing of a grievance, even if done with an improper motive and/or without any justification or cause.

**Rule 7.2 The Subcommittees; Regular and Special Meetings.**

(a) The Committee shall be divided into two Subcommittees: the St. Thomas - St. John Subcommittee, and the St. Croix Subcommittee.

(b) Each Subcommittee shall meet on a regular basis, not less than twice per year upon notice given not less than thirty (30) days in advance of said meeting.

(c) The Chairman, or a majority of the members of each Subcommittee, may call a Special Meeting of the Subcommittee for any lawful purpose, provided that notice of said meeting is given thirty (30) days in advance of said meeting. The purpose of said Special Meeting shall be set forth in the Notice. No business may be transacted at the Special Meeting other than what has been set forth in the Notice.

**Rule 7.3 The Chairmen of the Committee.**

Each Subcommittee shall have at least one Chairman who shall be the administrative head of the Subcommittee. No attorney shall be eligible to serve as a Chairman unless he shall have been a member of the Committee for at least 2 years.

Past Chairmen shall cooperate fully with new Chairmen, including the turnover of all files, notes, and other matters pertinent to the Committee's work.

**Rule 7.4 Assignment of Members to The Subcommittees.**

Members shall be assigned to one of the two Subcommittees. Upon request of a member, and with the approval of the Chairman of each Subcommittee, a member may be reassigned from one Subcommittee to the other. Such reassignment shall be considered an administrative matter, and shall not need the approval of the President of the Bar, or of the Presiding Judge.

**Rule 7.5 Staffing of Subcommittees.**

Each Subcommittee shall be staffed by sufficient members to perform the work of that Subcommittee. Consideration shall be given to the existing backlog of grievances, any trends which may be discernable based on recent past history, and the volunteer nature of Committee membership. The Chairman of each Subcommittee shall make recommendations to the President of the Bar and the Presiding Judge of the Superior Court

regarding the staffing needs of the Committee, and of each of its Subcommittees.

**Rule 7.6 Special Assignment of Members to The Subcommittees.**

A member of one Subcommittee may be specially assigned to a grievance or grievances pending in the other Subcommittee, with the consent of the member, and of the Chairmen of both Subcommittees. Such a special assignment shall be considered an administrative matter, and shall not require the approval of the President of the Bar or of the Presiding Judge.

**Rule 7.7 Timely Adjudication of Grievances.**

(a) Each Subcommittee shall promptly adjudicate all grievances assigned to it.

(b) It is the aspirational goal of the Committee that all grievances be resolved within twelve (12) months of assignment to the Subcommittee.

(c) The failure of any Adjudicatory Panel or the Subcommittee to strictly comply with any time frames set forth in these Rules, or to adjudicate any grievance within twelve (12) months, shall not be grounds for dismissal, mitigation of sanctions, or any other relief to any Respondent.

COMMITTEE NOTE: This Rule 7.7(c) is consistent

with R. 18J, RLDE.

**Rule 7.8 Restrictions on Employment by Members of The Committee.**

(a) No member of an Adjudicatory Panel or that member's firm, while serving as an Adjudicatory Panel member or within one (1) year of the completion of the such service, may accept employment as a lawyer from any Grievant or Respondent if said employment in any manner relates to, or arises from the member's work on or in connection with the grievance. In the event that a Committee member or a member of the Committee member's firm represents a Grievant or a Respondent in a manner which results in the filing of a grievance, the Committee member shall not act as a case investigator or as an Adjudicatory Panel member in such grievance.

(b) Members of the Committee are free to accept employment as lawyers, from any Respondent, or any Grievant, where said employment does not relate to or arise from the member's work on or in connection with the grievance.

COMMITTEE NOTE: Rule 7.8(b) is inconsistent with Rules 2F(2) and 3F(2) of the RLDE. The Committee believes (1) that Grievants and Respondents should be allowed to retain the services of members of the Committee, and to benefit from their special expertise, and (2) that the volunteer lawyers who serve on the Committee should not be penalized in the form of a blanket prohibition from obtaining

clients or assignments, when appropriate. This Rule 7.8(a) specifies those situations where accepting a client or an assignment is to be considered inappropriate.

AMENDMENT NOTE: Amendments to this Rule were proposed prior to the Committee's vote on the Rules. The proposed amendment to subsection (a) was designed "to include members of the firm of a Committee member and to specify what should happen if a Committee member is already representing someone in a dispute from which a grievance later develops." The amendments to Rule 7.8 were passed by majority vote of the Committee and they were added to the Rules.

**Rule 8 Amendments to The Rules.**

**Rule 8.1 Amendments to the Rules with the Concurrence of all Chairmen.**

Subject to the approval of the Board of Governors of the Bar Association and the approval of the Court, with the concurrence of all Chairmen these Rules may be amended by majority vote of a quorum of the Committee, as defined in Rule 8.3.

**Rule 8.2 Amendments to the Rules without the Concurrence of all Chairmen.**

Subject to the approval of the Board of Governors of the Bar Association and the approval of the Court, without the concurrence of all Chairmen, the Rules may be amended by a vote of 2/3 of a quorum of the Committee, as defined in Rule 8.3.

**Rule 8.3 Quorum of The Committee.**

(a) Voting on any amendments to these Rules shall

take place during any regular or special meeting of each Subcommittee. 51% of the members of each Subcommittee shall constitute a quorum of the Committee necessary for voting on any amendment to these Rules.

(b)] Notice of any proposed amendments shall be given in writing to all members of the Committee at least thirty (30) days prior to any regular or special meeting of the Subcommittees at which a vote on said amendments shall take place. Said Notice shall contain the precise language of the proposed amendment, and shall specifically reference any section of these Rules which is being changed, deleted, modified or added to.

**Rule 8.4 Approval of Amendments by the Board of Governors.**

Upon approval of the Committee, as set forth above, the Committee will submit any amendment to the Board of Governors for approval.

**Rule 8.5 Approval of Amendments by the Court.**

Upon approval by the Board of Governors, as set forth above, the Board of Governors will submit any amendment to the Court for approval. An amendment shall be effective upon entry of an Order therefore by the Court and completion of the notice requirements of Rule 8.7.

**Rule 8.6 Approval of Amendments by Virgin Islands Bar Association Not Required.**

Amendments to these Rules shall not require the approval of the membership of the Virgin Islands Bar Association.

**Rule 8.7 Notice of Amendments to these Rules to Members of the Virgin islands Bar Association.**

Notice of each amendment to these Rules shall be mailed to all members of the Virgin Islands Bar Association. The effective date of any amendment shall be thirty (30) days after notice is mailed.

**Rule 9: Savings Clause; Effective Date of Rules.**

**Rule 9.1 Prospective Operation of Rules.**

The operation and effect of these Rules, and of any amendment thereto, shall apply to any grievance commenced after the date these Rules become effective, as defined in Rule 9.3.

**Rule 9.2 Application of Rules to Pending Grievances.**

These Rules shall also apply to any grievance pending at the time of the effective date of these Rules, to the extent feasible and equitable.

**Rule. 9.3 Rules to Become Effective Thirty (30) days after Notice.**

These Rules shall become effective thirty (30) days after notice is mailed to all members of the

V.I. Bar Association.

[TO BE PRINTED ON V.I. BAR ASSOCIATION STATIONERY]

Re: Grievant: \_\_\_\_\_  
Respondent: \_\_\_\_\_  
Case No.: \_\_\_\_\_

OFFER TO CONSENT

I hereby offer to Consent to disposition of the above-referenced grievance, as follows:

1. I admit to a violation of the following rules of the Model Rules of Professional Conduct:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. I consent to the imposition of the following sanction(s):

1. \_\_\_\_\_  
\_\_\_\_\_

2. \_\_\_\_\_  
\_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_  
\_\_\_\_\_

I have read Rules 3.13 - 3.18 of the Rules of the Ethics & Grievance Committee (the "Committee") of the Virgin Islands Bar Association, ("the Rules"), and I am familiar with the terms thereof.

By executing this Offer of Consent I waive all rights I may have under the Rules, which waiver shall be effective if this Offer to Consent is accepted by the Adjudicatory Panel, and where necessary, approved by the Court.

I understand that this offer to Consent must be agreed to and executed by the Case Investigator assigned to the above-referenced grievance, and must be accepted by the Adjudicatory Panel, before it will become effective. In situations governed by Rule 3.15, this Offer to Consent must also be approved by the Court.

I understand that the Adjudicatory Panel, in considering this Offer to Consent, may wish to communicate with the Case Investigator, and I agree and consent to all such communications.

DATE:

Respondent:

\_\_\_\_\_

Offer to Consent

Page 81

Agreed to:

CASE INVESTIGATOR

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ACCEPTED: Adjudicatory Panel      REJECTED: Adjudicatory Panel

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

OPTIONAL:

An Offer to Consent would be accepted subject to the following:

\_\_\_\_\_  
\_\_\_\_\_

Adjudicatory Panel

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Where the sanction is:

1. Probation
2. Suspension
3. Disbarment

this Offer to Consent must be approved by the Court.

APPROVED:

\_\_\_\_\_  
Presiding Judge, Superior Court

[TO BE PRINTED ON V.I. BAR ASSOCIATION STATIONERY]

IN THE ST. THOMAS-ST. JOHN SUBCOMMITTEE  
OF THE  
PROFESSIONAL ETHICS AND GRIEVANCE COMMITTEE

DISPOSITION FORM

Re: Grievant(s): \_\_\_\_\_,  
Respondent(s): \_\_\_\_\_, Esq.  
Grievance No.: \_\_\_\_\_

1. The above-referenced grievance was **STAYED**, due to:

( ) Pending civil action between the parties

( ) Other (specify)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. The above-referenced grievance was transferred to the St. Croix Subcommittee:

( ) For consolidation with pending grievances on St. Croix

( ) Conflict of Interest

( ) Convenience of the grievant or witnesses

( ) Other (specify)

\_\_\_\_\_  
\_\_\_\_\_

3. The above referenced grievance was **DISMISSED**

- ( ) The grievance was withdrawn by the grievant
- ( ) A finding was made by the Panel of no probable cause to continue this grievance (specify)
- ( ) Other (specify)

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---

4. The above-referenced grievance resulted in the following finding, after a hearing on the merits by the adjudicatory panel duly assigned to hear this grievance. A copy of the decision of the panel is attached.

- ( ) Private reprimand
- ( ) Public reprimand
- ( ) Restitution to the grievant in the sum of \$\_\_\_\_\_
- ( ) Payment of costs to Virgin Islands Bar Association in the sum of \$\_\_\_\_\_
- ( ) Suspension for a period of \_\_\_\_ months/years
- ( ) Disbarment
- ( ) Other (specify)

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Date:

Duly Entered:

Adjudicatory Panel

Date:

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\_\_\_\_\_  
Chairman, St. Thomas-  
St. John Subcommittee  
Professional Ethics  
and Grievances

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[TO BE PRINTED ON V.I. BAR ASSOCIATION STATIONERY]

IN THE ST. CROIX SUBCOMMITTEE  
OF THE  
PROFESSIONAL ETHICS AND GRIEVANCE COMMITTEE

DISPOSITION FORM

Re: Grievant(s): \_\_\_\_\_,  
Respondent(s): \_\_\_\_\_, Esq.  
Grievance No.: \_\_\_\_\_

1. The above-referenced grievance was **STAYED**, due to:

( ) Pending civil action between the parties

( ) Other (specify)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. The above-referenced grievance was transferred to the St. Thomas-St. John Subcommittee:

( ) For consolidation with pending grievances on St. Thomas-St. John

( ) Conflict of Interest

( ) Convenience of the grievant or witnesses

( ) Other (specify)

\_\_\_\_\_  
\_\_\_\_\_

3. The above referenced grievance was **DISMISSED**

- ( ) The grievance was withdrawn by the grievant
- ( ) A finding was made by the Panel of no probable cause to continue this grievance (specify)
- ( ) Other (specify)

---

---

4. The above-referenced grievance resulted in the following finding, after a hearing on the merits by the adjudicatory panel duly assigned to hear this grievance. A copy of the decision of the panel is attached.

- ( ) Private reprimand
- ( ) Public reprimand
- ( ) Restitution to the grievant in the sum of \$\_\_\_\_\_
- ( ) Payment of costs to Virgin Islands Bar Association in the sum of \$\_\_\_\_\_
- ( ) Suspension for a period of \_\_\_\_ months/years
- ( ) Disbarment
- ( ) Other (specify)

---

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Date:

Duly Entered:

Adjudicatory Panel

Date:

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\_\_\_\_\_  
Chairman, St. Croix  
Subcommittee  
Professional Ethics  
and Grievances

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[TO BE PRINTED ON V.I. BAR ASSOCIATION STATIONERY]

NOTICE OF COURT-ORDERED SANCTIONS

TO: \_\_\_\_\_ [Client, Opposing  
Counsel, Co-Counsel,  
Court, Agency]

FROM: \_\_\_\_\_ [Respondent]

DATE: \_\_\_\_\_

By Order of the \_\_\_\_\_ Court dated  
\_\_\_\_\_, I am required to advise you that the  
following sanction(s) have been imposed on me:

1. Probation and apprenticeship for \_\_\_\_\_  
months/years. My Court-ordered supervisor  
during probation is \_\_\_\_\_.
2. Suspension for \_\_\_\_\_ months/years.
3. Disbarment from the Virgin Islands Bar.

A true and correct copy of the Court's Order is enclosed  
for your reference.

From the date set forth in the Court's Order,

1. I can practice law in the Virgin Islands only  
under the supervision of \_\_\_\_\_.
2. I cannot practice law in the Virgin Islands  
for a period \_\_\_\_\_ months/years.
3. I cannot practice law in the Virgin Islands.
4. Other terms and/or conditions:

\_\_\_\_\_  
\_\_\_\_\_

Sworn and Subscribed to this  
\_\_\_\_ day of \_\_\_\_\_, 200\_.

\_\_\_\_\_

[TO BE PRINTED ON V.I. BAR ASSOCIATION STATIONERY]

FEE MEDIATION REFERRAL FORM

**RE: Grievant:** \_\_\_\_\_  
**Respondent:** \_\_\_\_\_  
**Case No:** \_\_\_\_\_

1. I understand and agree to fee mediation of the above-referenced matter. I agree that the fee mediator will be \_\_\_\_\_.

2. I understand and agree that in the event the mediation is successful, the grievance will be marked as "withdrawn" in the records of the V. I. Bar Association, and no further proceedings will be held with respect to the grievance, or any matters encompassed within the grievance.

3. I understand and agree that all discussions which take place with the fee mediator will be off the record, and confidential, and may not be disclosed to the panel, or to the Court, in the event that the mediation is unsuccessful.

4. I understand and agree that mediation is voluntary for both sides, and that neither side may be compelled to accept the fee mediator's suggestions or recommendations. I understand and agree that this grievance will be referred

back to the Case Investigator, and to the Panel to which this matter initially was assigned, should the mediation be unsuccessful, and that no report of the mediation will be made or provided by the mediator. In such event, the grievance will proceed in the customary fashion, as if there had been no fee mediation.

5. I understand and agree that during the pendency of the fee mediation, that this grievance will be officially listed by the Panel and the Committee as "STAYED".

6. I understand and agree that a copy of this Agreement of Referral shall be provided to the fee mediator, to the members of the Panel, and the Co-chairmen of the Committee.

APPROVED:

Grievant:

Respondent:

\_\_\_\_\_

\_\_\_\_\_

Case Investigator, Panel No. \_\_\_\_\_

\_\_\_\_\_

[TO BE PRINTED ON V.I. BAR ASSOCIATION STATIONERY]

**DISCLOSURE STATEMENT FOR  
ETHICS & GRIEVANCE COMMITTEE MEMBERS  
(New Appointment)**

Subject to the penalties of perjury, I hereby subscribe and affirm as true the following:

1. I have actively practiced law for the five (5) years immediately preceding the date of this Disclosure Statement, of which not less than three (3) years have been in the U.S. Virgin Islands;
2. I do not have any grievances currently pending against me in the Virgin Islands, or in any other jurisdiction to which I am admitted. Currently, I am admitted in the following jurisdictions: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
3. At no time has the sanction of suspension or disbarment ever been imposed on me in the Virgin Islands, or in any other jurisdiction;
4. No felony conviction for a serious crime, as defined in Rule 3.2(b)(ii) of the Rules of the Ethics & Grievance Committee, has ever been entered against me.

**STATEMENT IN LIEU OF AFFIDAVIT**

Affirmed as true pursuant to Title 5, V.I. Code Section 699.

DATE:

\_\_\_\_\_

[TO BE PRINTED ON V.I. BAR ASSOCIATION STATIONERY]

**DISCLOSURE STATEMENT FOR  
ETHICS & GRIEVANCE COMMITTEE MEMBERS  
(Re-Appointment)**

Subject to the penalties of perjury, I hereby subscribe and affirm as true the following:

1. I have actively practiced law for the five (5) years immediately preceding the date of this Disclosure Statement, of which not less than three (3) years have been in the U.S. Virgin Islands;
2. At no time has the sanction of suspension or disbarment ever been imposed on me in the Virgin Islands, or in any other jurisdiction;
3. No felony conviction for a serious crime, as defined in Rule 3.2(b)(ii) of the Rules of the Ethics & Grievance Committee has ever been entered against me.

**STATEMENT IN LIEU OF AFFIDAVIT**

Affirmed as true pursuant to Title 5, V.I. Code Section 699.

DATE:

  
  

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