

# **VIRGIN ISLANDS SUPREME COURT RULE 40**

## **(as amended November 2, 2011)**

### **Rule 40. Electronic Filing and Service**

#### **40.1. Definitions**

As used in this Rule 40:

- (1) “Conventional filing” or “file through conventional means” means filing a paper document in accordance with the procedure established in Rule 15(f).
- (2) “Virgin Islands Supreme Court Electronic Filing System” or “VISCEFS” means the C-Track system utilized by the Supreme Court to accept and transmit electronic documents. VISCEFS may be accessed from the Supreme Court’s website at [www.visupremecourt.org](http://www.visupremecourt.org).
- (3) “Virgin Islands Appellate Case Management System” or “VIACMS” means the C-Track system utilized by the Supreme Court to record information and documents related to all cases filed in the Supreme Court. VIACMS may be accessed from the Supreme Court’s website at [www.visupremecourt.org](http://www.visupremecourt.org).
- (4) “Document” means any pleading, motion, exhibit, order, judgment, decree, or other form of written communication or memorialization, whether prepared on paper or electronically, that is filed with the Clerk of the Supreme Court.
- (5) “E-document” or “electronic document” means any document, other than an e-record, that has been e-filed in accordance with these Rules.
- (6) “E-file” or “e-filing” or “electronically file” or “electronic filing” means the electronic transmission of a document to the Clerk of the Supreme Court for the purposes of filing and storing the document with the VIACMS.
- (7) “E-record” means legible electronic copies of the Superior Court’s certified docket entries, the order or judgment appealed from, the portions of any transcripts ordered by the parties and filed by the reporter pursuant to Rule 10(b), and any other portions of the record on appeal that have been prepared, assembled, and e-filed with the Clerk of the Supreme Court by the Clerk of the Superior Court in an electronic format as prescribed in these Rules.
- (8) “E-service” or “service” through electronic means means the electronic transmission of a document in accordance with the procedure established in Rule 15(d) in lieu of serving such document through conventional service.
- (9) “Electronic signature” is a signature that is either affixed or deemed to be affixed to an e-document or e-record as prescribed in Rule 40.4.
- (10) “File” or “filing” means the submission of documents, either conventionally or electronically, with the Supreme Court, depending on whether the party and the matter are subject to electronic filing pursuant to Rule 40.2.
- (11) “E-filer” means the Filing User whose user ID and password were used to e-file an e-document in a Supreme Court proceeding.

- (12) “Filing User” means an attorney or other authorized person who has properly registered with the VISCEFS system as set forth in Rule 40.2.
- (13) “Notice of Electronic Filing” refers to a notification, generated automatically upon the electronic filing of a document through VISCEFS, sent by the Clerk of the Supreme Court to all parties to an appeal or original proceeding who are subject to electronic filing pursuant to Rule 40.2, that an electronic filing has been placed on the docket and stored in the VIACMS.
- (14) “Portable document format” or “PDF” means a computer file format developed by Adobe Systems for reproducing a document in a manner that is independent of the application software, hardware, and operating system originally used to create the document.

## **40.2. VISCEFS Filing of Documents**

### **(a) Scope of Electronic Filing; Exemptions.**

- (1) For all appeals and original proceedings in the Supreme Court, parties represented by an attorney must e-file all briefs, motions, petitions, and other documents electronically in accordance with the procedures of these Rules unless an exemption has been obtained pursuant to Rule 40.2(a)(3) or the Supreme Court has ordered that e-filing be disallowed in a particular case.
- (2) Parties proceeding *pro se* who are not members of the Virgin Islands Bar may, but are not required to, e-file documents.
- (3) Notwithstanding Rule 40.2(a)(1), the Clerk of the Supreme Court may, upon motion showing extraordinary circumstances, exempt an attorney from mandatory electronic filing or registration as a Filing User, either for purposes of a particular document or for an entire case. Motions for exemption from electronic filing in all cases shall be docketed as a separate original proceeding and assigned a miscellaneous case number, while motions for exemption from electronic filing in a particular case or with respect to a particular document shall be docketed as part of the case in which the exemption is being sought.
- (4) Notwithstanding Rule 40.2(a)(1), all *ex parte* motions, such as motions to file a document under seal, must only be conventionally filed.

### **(b) Persons Required or Eligible to Register as Filing Users**

- (1) All attorneys regularly or specially admitted to practice before the Supreme Court, as well as all applicants for regular admission, are required to register as Filing Users of the Supreme Court’s VISCEFS system.
- (2) A party to a pending appeal or original proceeding who is not represented by an attorney and who is not an attorney may, but is not required to, register as a Filing User in the VISCEFS system solely for purposes of that case. Filing User status will be terminated upon termination of the case, and a separate request for Filing User status must be made in each case in which the *pro se* party wishes to electronically file documents through the VISCEFS system. If a *pro se* party who has registered as a Filing User subsequently retains an attorney, the attorney must immediately advise the Clerk of the Supreme Court, who shall then terminate the *pro se* party’s Filing User status in that case.

- (3) An attorney admitted *pro hac vice* in a particular matter may register as a Filing User in the VISCEFS system solely for purposes of that case. Filing User status will be terminated upon termination of the case, and a separate request for Filing User status must be made in each case in which the attorney is admitted *pro hac vice* and wishes to electronically file documents through the VISCEFS system. If an attorney admitted *pro hac vice* ceases to represent any of the parties in a case in which Filing User status has been obtained, the attorney must immediately advise the Clerk of the Supreme Court, who shall then terminate the attorney's Filing User status in that case. The requirement in Supreme Court Rule 201(c) that all pleadings filed by an attorney admitted *pro hac vice* be signed by local counsel shall be satisfied if an electronic filing contains the local attorney's electronic signature, as set forth in Rule 40.4, or contains a statement that the local attorney has reviewed and consented to the filing. In the event an attorney admitted *pro hac vice* chooses not to register as a Filing User, local counsel will be required to register as a Filing User and file all documents electronically unless an exemption has been obtained pursuant to Rule 40.2(a)(3) or the Supreme Court has ordered that e-filing be disallowed in that particular case.
  - (4) The Clerk of the Superior Court and his or her designees, as well as all court reporters and transcribers, shall register as Filing Users in the VISCEFS system. Filing Users registered pursuant to this Rule 40.2(b)(4) may only e-file, as the case may be, the documents identified in Rules 40.3(j) and 40.3(k), and requests for extension of time or payment. When an individual registered as a Filing User pursuant to this Rule 40.2(b) ceases his or her employment with the Superior Court Clerk's Office or as a court reporter or transcriber, the Clerk of the Superior Court or Court Reporter Supervisor, as the case may be, must immediately advise the Clerk of the Supreme Court, who shall then terminate that individual's Filing User status.
  - (5) Required registration information shall include, at minimum, the registrant's name, bar number (if an attorney), one or more email addresses for service of process, a physical address, one or more telephone numbers and, if available, a fax number. In addition, every registrant must consent to electronic service in lieu of conventional service in all cases in which electronic filing is required or permitted. Additional registration requirements may be defined by the Supreme Court and may include training as a prerequisite to registration as a Filing User. Upon successful registration, the Clerk of the Supreme Court shall issue a user identification (user ID) and password to the registrant. The user ID and password shall be used exclusively by the Filing User or, if the Filing User is an attorney, by the Filing User's assistant or staff member. A Filing User shall not knowingly permit a user ID or password to be used by anyone other than the Filing User and, if the Filing User is an attorney, the Filing User's assistant or staff member. Each Filing User shall safeguard his or her user ID and password and shall immediately notify the Clerk of the Supreme Court upon discovery or suspicion that the user ID and/or password security has been breached.
- (c) **Consequences of Registration as Filing User.** As a prerequisite to registration as a Filing User, all individuals eligible to register as Filing Users must:
- (1) acknowledge that registration as a Filing User constitutes consent to electronic service of all documents;

- (2) agree to protect the security of their passwords and immediately notify the Clerk of the Supreme Court if they learn that their password has been compromised;
- (3) agree to immediately notify the Clerk of the Supreme Court if their contact information, including, but not limited to, their email address, has changed;
- (4) certify that, prior to submitting any document for electronic filing, the Filing User shall make all required redactions and scan the document for viruses;
- (5) agree to comply with these Rules and any other regulations established as a condition to use of the VISCEFS system, including, but not limited to, the prohibition against submitting excessive filings, either in terms of quantity or length.

(d) **Sanctions.**

- (1) The Clerk of the Supreme Court may, at any time, with or without notice, suspend or terminate the electronic filing privileges of any Filing User who abuses the system.
- (2) Notwithstanding Rule 40.2(d)(1), the Supreme Court may sanction any Filing User or other individual who makes use of the VISCEFS system for violating any provision of these Rules or for abusing the VISCEFS system.

### **40.3. Procedures for Electronic Filing**

- (a) **Electronic Transmission Constitutes Filing.** Electronic transmission of a document through VISCEFS to the VIACMS system consistent with these Rules, together with the transmission of a Notice of Electronic Filing from the Clerk of the Supreme Court, constitutes filing of the document and entry of the document on the docket of the VIACMS kept by the Clerk of the Supreme Court under Rule 35(b). If the Supreme Court requires a party to file a motion for leave to file a document, both the motion and document at issue should be submitted electronically; the underlying document will be accepted if the Supreme Court so directs.
- (b) **Timeliness of E-Filed Documents.** Documents e-filed to the Supreme Court must be transmitted on or before 11:59 p.m., Atlantic Standard Time, to be considered timely filed that day.
- (c) **Format and Style of E-Filed Documents.**
  - (1) **File Format.** Before e-filing a document with the Supreme Court, an e-filer must verify its legibility and completeness. It is preferred that documents created by the e-filer already be in PDF format prior to electronic filing. A document created with a word processor using Microsoft Word or WordPerfect will be converted to PDF format by the Supreme Court's VISCEFS system when electronically filed with the Court. However, scanned documents, except for those in TIFF and JPEG format, as well as documents created with other word processors, must be converted to PDF format by the e-filer before they are electronically filed with the Supreme Court.
  - (2) **Style and Binding Requirements.** The provisions of Rule 15(a), which prescribe the color of covers for briefs and appendices and how briefs, appendices, motions, and other paper documents are to be bound, shall not apply to documents filed electronically, but shall remain in effect for paper copies of those documents.
- (d) **Multiple Documents as Single Filing Prohibited.** E-filers are expressly prohibited from e-filing multiple motions, petitions, or other documents as a single filing or docket entry in the

VIACMS system, but a Filing User may submit multiple parts of a single oversized document separately. For example, an e-filer may not combine a motion for extension of time to file a brief with a motion for a limited remand, or combine a motion to dismiss with an opposition to a motion for expedited appeal, but may file a two-part joint appendix. Failure to comply with this Rule may result in rejection of the combined document by the Supreme Court.

(e) **Attachments and Exhibits to Motions, Petitions, and Other Filings**

(1) Notwithstanding Rule 40.3(d), an e-filer must submit, in PDF format, all documents referenced as exhibits or attachments to a motion, petition, or other filing. Such exhibits or attachments must be filed as multiple documents submitted with the motion, petition, or filing in which they are referenced as part of the same docket entry. An e-filer must submit as exhibits or attachments only those excerpts of the referenced documents that are directly germane to the matter under consideration by the Supreme Court. Excerpted material must be clearly and prominently identified as such. The Supreme Court may require parties to file additional excerpts or the complete document.

(2) The size of a single document submitted to the VISCEFS system cannot exceed 25 megabytes, but a Filing User may submit multiple parts of a single oversized document separately as part of a single filing.

(3) Those exhibits and attachments that cannot be submitted in PDF format, or are not legible when scanned or converted to PDF format, shall be forwarded to the Supreme Court and to all parties in the case in paper form within twenty-four hours of the date the motion, petition, or other document is e-filed by the e-filer, unless the day following the filing date for the motion, petition, or other filing is a Saturday, Sunday, or legal holiday, in which event the exhibit or attachment shall be forwarded no later than the end of the next day that is not a Saturday, Sunday, or legal holiday. Regular mail of the United States Postal Service is a sufficient means for delivering paper copies of exhibits and attachments pursuant to this Rule. A notice regarding the e-filer's inability to electronically submit the exhibit or attachment shall be filed electronically, and shall also accompany all copies of the motion, petition, or other filing that are served on the parties, regardless of whether the motion, petition, or other filing is served on the party electronically or in paper form. Upon final disposition of the proceeding, the Supreme Court may dispose of all copies of paper exhibits and attachments that were not e-filed with the principal motion, petition, or other filing.

(f) **E-Document as Official Record.** After an e-document has been filed electronically, the official record is the e-document stored by the VIACMS, and the filing party is bound by the e-document as filed. An e-document is deemed filed at the date and time stated on the Notice of Electronic Filing from the Supreme Court.

(g) **Electronic Versions of Previously-Filed Paper Documents.** Upon the Supreme Court's request, a Filing User must promptly provide the Clerk of the Supreme Court, in a format designated by the Supreme Court, an identical electronic version of any paper document previously filed in the same appeal or original proceeding by that Filing User.

(h) **Paper Copies of E-Documents.** In addition to electronically filing a brief or appendix with the VISCEFS system, seven paper copies of briefs and four paper copies of the appendices must be filed with the Clerk of the Supreme Court for the convenience of the Supreme Court within three days after the electronic transmission of the e-document. No paper copies of

motions, petitions, or other documents need be filed unless otherwise required by these Rules or directed by the Clerk of the Supreme Court.

- (i) **Rejection of E-Documents.** Both the Supreme Court and the Clerk of the Supreme Court may reject any e-document, including the e-record, for failure to comply with this Rule 40. Upon rejection of an e-document, the Supreme Court or the Clerk of the Supreme Court shall notify the e-filer as well as all other parties to the action. Such notice shall state the reason or reasons for the rejection, as well as the amount of time, if any, within which the e-filer may file and serve a corrected e-document. If the notice does not specify the time in which a corrected e-document may be filed, the e-filer shall be deemed to have seven days after service of the notice of the rejection to file and serve a corrected e-document; provided, however, that if the rejected e-document is a notice of appeal, the corrected e-document must be filed and served within one business day of the date of rejection.
- (j) **Clerk of the Superior Court's Duty to Transmit E-Record.**
  - (1) The Clerk of the Superior Court shall e-file the e-record with the Clerk of the Supreme Court within ten days after the date the last reporter's transcript is filed with the Clerk of the Superior Court, or, in the event there is no reporter's transcript, within 28 days after the filing of the notice of appeal, unless the time is shortened or extended by an order of the Supreme Court.
  - (2) The e-record shall be assembled with the cover page first, followed by the order or judgment appealed from, the certified docket entries, any court reporter transcripts that have not been e-filed pursuant to Rule 40.3(k), all other documents that constitute the record, and a certificate of completion and transmittal and the Clerk of the Superior Court's index to the entire record. The Clerk of the Superior Court's index shall include an index to the documents that are contained in the e-record and an index to the documents incapable of being legibly reproduced in an electronic format. Unless otherwise ordered by the Supreme Court, the Clerk of the Superior Court shall retain custody of all documents incapable of being legibly reproduced in an electronic format, and the Clerk of the Superior Court shall allow all attorneys and parties proceeding *pro se* to access such documents while preparing their briefs.
  - (3) Paper copies of the documents constituting the e-record or the original file shall not be transmitted by the Clerk of the Superior Court unless during the pendency of the appeal the Clerk of the Supreme Court directs that designated parts of the record be transmitted.
  - (4) Notwithstanding Rule 40.3(j)(2), the Supreme Court may request that the Clerk of the Superior Court supplement the e-record by e-filing additional portions of the record in order to address a motion or the issues on appeal.
- (k) **Court Reporter's Duty to E-File Transcripts.** In accordance with Rule 10(b) and 11(b), the court reporter shall immediately e-file Part II of the TPO with the Supreme Court after receiving Part I of the TPO from the party requesting the transcript, and, once the necessary financial and other arrangements have been satisfied, shall file physical and electronic versions of all transcripts with the Clerk of the Superior Court and e-file Part III of the TPO with the Clerk of the Supreme Court.
- (l) **Notice of Entry of Court-Issued Documents.** Unless otherwise provided for in these Rules or by internal court procedures, the Clerk of the Supreme Court shall electronically serve all

orders, decrees, judgments, and other court-issued documents (except those issued under seal) on parties who are Filing Users through the VISCEFS or, if the VISCEFS does not yet have this functionality, by sending an email to the most recent email address provided by the Filing User.

- (m) **Docket or Text-Only Orders.** An order, but not a final judgment or decree, may be issued by the Supreme Court as a text-only entry on the docket, without an attached document. Such entry shall include the justice or Clerk's electronic signature. The justice or Clerk's electronic signature is valid for all purposes as official and binding on the parties.

#### **40.4. Electronic Signatures**

- (a) The user ID and password required to submit documents to the VISCEFS system serve as the Filing User's signature on all electronic documents filed with the court. They also serve as a signature for purposes of these Rules, and any other purpose for which a signature is required in connection with proceedings before the Supreme Court. No Filing User or other person may knowingly permit or cause to permit a Filing User's user ID and password to be used by anyone other than an authorized agent of the Filing User.
- (b) When e-filing any document, the name of the e-filer must be preceded by an "/s/" and typed in the space where the signature would otherwise appear, which will constitute the e-filer's electronic signature. Alternatively, a scanned hand-written signature may be used as an electronic signature.
- (c) Documents requiring signatures of more than one party must be electronically filed either by:
- (1) submitting a scanned document containing all necessary signatures;
  - (2) submitting a statement representing the consent of all the other parties on the document;
  - (3) identifying on the document the parties whose signatures are required and submitting a notice of endorsement by the other parties no later than three business days after filing; or
  - (4) in any other manner approved by the Supreme Court.
- (d) Documents that are electronically filed and require original signatures other than that of the e-filer must be maintained in paper form by the Filing User until two years after the issuance of the mandate or order closing the case, whichever is later. If an attorney receives permission to withdraw and a new attorney enters an appearance, documents that require original signatures must be transferred to the new attorney of record. On request of the Supreme Court, an e-filer must provide original documents for review.
- (e) Electronically represented signatures of all parties and Filing Users as described in this Rule 40.4 are presumed to be valid signatures. If any party, attorney of record, Filing User, or any other individual objects to the representation of his or her signature on an electronic document, he or she must, within 14 calendar days, file a notice setting forth the basis of the objection.

#### **40.5. Technical Failures and Difficulties Caused by Technology**

If a Filing User misses a filing deadline because of an inability to e-file a document as a result of difficulty caused by technology occurring on the deadline date for filing the document, the Filing User must, no later than the first day on which the Supreme Court is open for business

following the deadline date for filing the document, file the document accompanied by a motion to accept the document as timely filed. The motion shall include a declaration stating the reason or reasons for missing the deadline and stating why the document should be accepted as timely filed. If the Supreme Court grants the motion to accept the document as timely filed, the document shall be deemed timely filed on the date the Supreme Court grants the motion, notwithstanding any Supreme Court rule to the contrary. The Supreme Court will not accept the document as filed on the deadline date if it is not accompanied with a motion to accept the document as timely filed or if it is filed after the first day on which the Supreme Court is open for business following the deadline date.

#### **40.6. Public Access to Electronic Case Files**

- (a) The Clerk of the Supreme Court shall provide public access to the dockets and documents of all cases maintained in VIACMS through public computers; provided, however, that the Clerk of the Supreme Court shall restrict access to confidential, sealed, or otherwise restricted dockets and documents maintained in VIACMS consistent with Rule 40.6(d).
- (b) The Supreme Court shall provide internet access to the dockets of VIACMS cases (excluding those that are sealed, confidential, or otherwise restricted) without cost. The Supreme Court may, but is not required to, provide internet access to confidential, sealed, or otherwise restricted records to parties and attorneys entitled thereto consistent with Rule 40.6(d).
- (c) Filing Users shall protect personal information in public records and documents by making the redactions required by Rule 15(c).
- (d) Unless otherwise provided in these Rules or by court order:
  - (1) If a case is designated as confidential in VIACMS, members of the public may view the docket entries for the case, but only the attorneys and unrepresented parties (if registered as Filing Users) may view the documents in the case through VIACMS.
  - (2) If a case is designated as sealed in VIACMS, neither the docket entries nor the documents associated with the case may be viewable by the public, the attorneys, or the parties through VIACMS.

#### **40.7. Authority of Clerk**

- (a) The Clerk of the Supreme Court is authorized to issue notices, guidelines, user guides, and the like that provide clarification or assistance to facilitate electronic filing. Such clarification or assistance may be made available on the Supreme Court's website.
- (b) Notwithstanding Rule 2, the Clerk of the Supreme Court is authorized to temporarily suspend or modify any portion of this Rule 40, including imposing additional registration requirements or suspending Rule 40.2's mandatory electronic filing requirements, in order to respond to a technical failure, a security breach, or otherwise further the interests of justice.