CHAPTER 2

Jurisdiction

SECTIONS

§201. Appellate jurisdiction.

(1) The jurisdiction of the Appellate Division of the Supreme Court is as provided in the Constitution.

(2) The Appellate Division of the Supreme Court may review other cases appealed to it from a State court if the appeal is permitted by State constitution or District charter.

Source: PL 1-31 § 25.

Cross-reference: For constitutional provisions on jurisdiction, see FSM Const., art. XI, §§ 6, 7, and 8. The provisions of the Constitution are found in Part I of this code.

The constitutions of the states of Chuuk, Kosrae, Pohnpei, and Yap are found in Part III of this code.

Case annotations: There is no statutory limitation on the FSM Supreme Court's jurisdiction; the Judiciary Act of 1979 plainly contemplates that this court will exercise all of the jurisdiction available to it under the Constitution. 4 F.S.M.C. 201. *In re Nahnsen*, 1 FSM R. 97, 106 (Pon. 1982).

The presence or lack of subject matter jurisdiction can be raised at any time by any party or by the court. Once raised, it must be considered. This is because a decision by a court without subject matter jurisdiction is void, and such occurrences should be avoided.

Bualuay v. Rano, 11 FSM R. 139, 145 (App. 2002).

The general rule is that appellate review of a trial court is limited to final orders and judgments because a policy of judicial economy dictates against allowing piecemeal appeals. A final decision is one that leaves nothing open to further dispute and which ends the litigation on the merits, leaving the trial court with no alternative but to execute the judgment. *Jano v. Fujita*, 17 FSM R. 281, 283 (App. 2010).

When the trial court's order granting an award of attorney's fees was simply the beginning of a process since the order itself required the movant to submit evidence of the reasonable fees incurred, and when the key fact was that the trial court had not yet fixed on an amount for the attorney's fees and without fixing the amount, there was nothing for the trial court to execute, the movant's contention that the appeal was not from a final order is dispositive and the appeal will be dismissed because only once the fees have been fixed will the order become final and appealable. *Jano v. Fujita*, 17 FSM R. 281, 283 (App. 2010).

An appellate court is obligated to examine the basis of its appellate jurisdiction, *sua sponte*, if necessary. *Berman v. Pohnpei Legislature*, 17 FSM R. 339, 352 (App. 2011).

Even if no party has raised the issue, an appellate court is obligated to examine the basis for its jurisdiction. *Iriarte v. Individual Assurance Co.*, 17 FSM R. 356, 358 n.1 (App. 2011).

When, even though the trial court may have expressly directed entry of a judgment, it never made an express determination that there was no just cause for delay, the judgment is not an appealable final judgment since in the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties will not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and all the parties' rights and liabilities. Thus, although a filing designated as a "Judgment" was entered, it was, under Rule 54(b), not a final decision and therefore not appealable. *Iriarte v. Individual Assurance Co.*, 17 FSM R. 356, 358-59 (App. 2011).

The well-established general rule is that only final judgment decisions may be appealed. The appellate court can also review certain interlocutory orders involving injunctions, receivers and receiverships, and interlocutory decrees determining rights and liabilities in admiralty cases, and it may also grant appellate review when the trial court has issued an order pursuant to Appellate Rule 5(a), and it can review those rare collateral orders that conclusively determine a disputed question resolving an important issue completely separate from the action's merits but that are effectively unreviewable on appeal from a final judgment. *Iriarte v. Individual Assurance Co.*, 17 FSM R. 356, 359 (App. 2011).

Since a timely notice of appeal from a final decision is a prerequisite to the FSM Supreme Court's jurisdiction over an appeal, when there was no final decision in the civil action below, the court is without jurisdiction to consider the appeal and the appeal will be dismissed without prejudice to the merits of any future appeal from a final judgment decision. *Iriarte v. Individual Assurance Co.*, 17 FSM R. 356, 359 (App. 2011).

An appellee that has not filed a cross-appeal cannot urge or be granted any affirmative relief in the manner of a modification, vacation, or reversal of a trial court ruling in the appellant's favor. *Berman v. Pohnpei*, 17 FSM R. 360, 373 (App. 2011).

Generally, an order is not final when the substantial rights of the parties involved in the action remain undetermined and when the cause is retained for further action. Accordingly, a decision reserving certain questions for future determination or direction ordinarily cannot be final for the purposes of appeal. *Stephen v. Chuuk*, 17 FSM R. 453, 459 (App. 2011).

When a trial court disposes of a postjudgment motion for writ of garnishment and fully adjudicates the questions of ability to pay and fastest method of payment and when the trial court has not retained for itself the power to review compliance with the order at a specific later date, the trial court's order is final for the purposes of appeal. *Stephen v. Chuuk*, 17 FSM R. 453, 460 (App. 2011).

The question of the civil rights nature of the underlying cases was not properly before the appellate court when the trial court does not appear to have made a final determination on the question whether the violation should be considered as tort or civil rights in nature. *Stephen v. Chuuk*, 17 FSM R. 496, 499 (App. 2011).

The requirement that a notice of appeal be timely filed is mandatory and jurisdictional, and, since the Rule 4(a)(1) time limit is

jurisdictional, if that time is not extended by the grant of a timely Rule 4(a)(5) motion to extend that time period, the appellate court will lack jurisdiction to hear the case. An untimely filed appeal must be dismissed. *Jonah v. FSM Dev. Bank*, 17 FSM R. 506, 508 (App. 2011).

Interlocutory orders involving injunctions, receivers and receiverships, and interlocutory decrees determining rights and liabilities in admiralty cases, are reviewable in the appellate division and interlocutory appellate review may also be granted when the trial court has issued an order pursuant to Appellate Rule 5(a). *Mori v. Hasiguchi*, 17 FSM R. 602, 604 (Chk. 2011).

The FSM Supreme Court trial division has no appellate or supervisory jurisdiction over either division of the Pohnpei Supreme Court, and no appeal lies from the Pohnpei Supreme Court to the FSM Supreme Court trial division. *Damarlane v. Pohnpei Supreme Court Appellate Division*, 10 FSM R. 116, 120 (Pon. 2001).

The court's review of a single justice's action is discretionary, and when the appeal is fully briefed and is ready to be heard on its merits and when the full court finds that its order directing distribution of a portion of the cash *supersedeas* bond is sufficient to protect the appellees, the court will not revisit every single justice order. *Panuelo v. Amayo*, 11 FSM R. 205, 209 (App. 2002).

As a general rule, a properly filed notice of appeal transfers jurisdiction from the trial court to the appellate court, but a trial court may retain jurisdiction over the issue of attorneys' fees even though an appeal is pending on the merits of the case. *Damarlane v. United States*, 8 FSM R. 14, 16 (App. 1997).

A trial court has jurisdiction to issue an order assessing costs, even though it was issued after the notice of appeal was filed. *Damarlane v. United States*, 8 FSM R. 14, 17 (App. 1997).

A policy of judicial economy dictates against allowing further piecemeal appeals when the appeal in question arises from the same civil action and involves the same or similar questions of law. *Damarlane v. United States*, 8 FSM R. 14, 17 (App. 1997).

An appeal is still pending on the day before the appellate opinion is filed even though the justices' signatures are dated earlier. *Damarlane v. Pohnpei Legislature*, 8 FSM R. 23, 26 (App. 1997).

An appeal to the FSM Supreme Court appellate division may be made from all "final decisions" of the FSM Supreme Court trial division. *Barrett v. Chuuk*, 16 FSM R. 229, 233 (App. 2009).

When the trial court planned to take further post-judgment action, its decision could not be considered final for appeal purposes. But when the trial court states that it will not take any further action unless the appellate division chooses to expand a previous ruling, the trial court's order is a final decision since it does not contemplate further action by the court, and the appeal will proceed on the merits. *Barrett v. Chuuk*, 16 FSM R. 229, 233 (App. 2009).

When a trial court dismisses less than all of the claims but does not expressly make the required findings under Rule 54(b), that dismissal is not a final decision. When the trial court did not expressly determine that there was no just cause for delay and did not expressly direct the entry of judgment, the appeal is not from a final decision since the trial court must do both for a partial adjudication to be deemed a final decision capable of being appealed. *Smith v. Nimea*, 16 FSM R. 346, 349 (App. 2009).

Appeals are not permitted when the appeal is over issues involving steps moving towards a final order into which the interlocutory orders or partial adjudications will eventually merge. The purpose of limiting appeals to those from final decisions is to combine in one appellate review all stages of the proceeding once a final judgment or order results. This advances the policy of judicial economy which dictates against piecemeal appeals from the same civil action. *Smith v. Nimea*, 16 FSM R. 346, 349 (App. 2009).

A timely notice of appeal from a final decision is a prerequisite to an appellate court's jurisdiction over an appeal. *Smith v. Nimea*, 16 FSM R. 346, 349 (App. 2009).

An appeal that is not from a final decision will be dismissed for lack of jurisdiction without prejudice to any future appeal from a final decision. *Smith v. Nimea*, 16 FSM R. 346, 349 (App. 2009).

§ 202. Territorial jurisdiction.

The jurisdiction of the Supreme Court shall extend to the whole of the Federated States of Micronesia as defined in article I, section 1 of the Constitution.

Source: PL 1-31 § 26.

Cross-reference: For constitutional provisions on jurisdiction, see FSM Const., art. XI, §§ 6, 7, and 8. The provisions of the FSM Constitution are found in Part I of this code.

Case annotations: The burden is always upon the one who seeks the exercise of the power of the court in her behalf to establish that the court does have jurisdiction. *Neimes v. Maeda Constr. Co.*, 1 FSM R. 47, 47 (Truk 1981).

Probate matters are statutory and involve proceedings in rem, that is, jurisdiction based on court control of specific property. *In re Nahnsen*, 1 FSM R. 97, 103 (Pon. 1982).

There is no statutory limitation on the FSM Supreme Court's jurisdiction; the Judiciary Act of 1979 plainly contemplates that this court will exercise all of the jurisdiction available to it under the Constitution. 4 F.S.M.C. 201. *In re Nahnsen*, 1 FSM R. 97, 106 (Pon. 1982).

The FSM Supreme Court is empowered to exercise authority in probate matters where there is an independent basis for jurisdiction under the Constitution. *In re Nahnsen*, 1 FSM R. 97, 104 (Pon. 1982).

The allocation of judicial authority is made on the basis of jurisdiction, generally without regard to whether state or national powers are at issue. *In re Nahnsen*, 1 FSM R. 97, 108 (Pon. 1982).

The Constitution contemplates that decisions affecting the people of the FSM will be decided by courts appointed by the constitutional governments of the FSM. This in turn requires an expansive reading of the FSM Supreme Court's jurisdictional mandate while we await establishment of functioning state courts. *In re Nahnsen*, 1 FSM R. 97, 111 (Pon.1982).

The FSM Supreme Court may look to decisions under the United States Constitution for guidance in determining the scope of jurisdiction since the jurisdictional language of the FSM Constitution is similar to that of the United States. *Etpison v. Perman*, 1 FSM R. 405, 414 (Pon. 1984).

The standard method of obtaining a determination from the FSM Supreme Court as to its jurisdiction over specific parties or issues is to file a civil or criminal action with the trial division of the FSM Supreme Court. *Koike v. Ponape Rock Prods. Co.*, 1 FSM R. 496, 500 (Pon. 1984).

The jurisdictional language in the FSM Constitution is patterned upon the United States Constitution. *In re Sproat*, 2 FSM R. 1, 4 n.2 (Pon. 1985).

A case must be one appropriate for judicial determination, that is, a justiciable controversy, as distinguished from a difference or dispute of a hypothetical or abstract character, or one that is "academic or moot". The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. *In re Sproat*, 2 FSM R. 1, 5 (Pon. 1985).

As a general rule the FSM Supreme Court trial division is obliged to exercise its jurisdiction and may not abstain simply because unsettled issues of state law are presented. *Edward v. Pohnpei*, 3 FSM R. 350, 360 (Pon. 1988).

Because the FSM Constitution states that the judicial power "is vested" in the Supreme Court, and the trial division "has jurisdiction" over certain cases "unlike the jurisdictional provisions of the United States Constitution, which are not self-executing" determinations as to the jurisdiction of the FSM courts are based on Constitutional interpretation rather than statutory construction, and therefore it cannot be assumed that United States court holdings will yield the correct result under FSM jurisdictional provisions. *FSM Dev. Bank v. Estate of Nanpei*, 2 FSM R. 217, 219 n.1 (Pon. 1986).

State courts do not normally look to the national Constitution as a source of jurisdictional authority, but instead typically rely upon state constitutions and state law for their authorization to act, so in considering whether a state court may exercise jurisdiction in a case the proper question is not whether the national Constitution authorizes, but whether it bars state courts jurisdiction. *Bank of Guam v. Semes*, 3 FSM R. 370, 377 (Pon. 1988).

Art. XI, § 6(c) of the Constitution places authority to prescribe jurisdiction only in the national Congress, and not in state legislatures. *Bank of Guam v. Semes*, 3 FSM R. 370, 379 (Pon. 1988).

Failure to mention national courts in section 25 of the Pohnpei State Real Property Mortgage Act should not be read as an attempt to deprive litigants of access to the FSM Supreme Court's trial division. *Bank of Guam v. Semes*, 3 FSM R. 370, 380 (Pon. 1988).

FSM Supreme Court's trial division does not lose jurisdiction over a case merely because land issues are involved, but if such issues are presented, certification procedures may be employed to avoid encroachment upon state decision making prerogatives. *Bank of Guam v. Semes*, 3 FSM R. 370, 381 (Pon. 1988).

The Constitution's jurisdictional provisions are self-executing. *U Corp. v. Salik*, 3 FSM R. 389, 394 (Pon. 1988).

In a case in which the High Court of the Trust Territory of the Pacific Islands did not transfer the case to the FSM Supreme Court or to the Truk State Court because it failed to act in conformity with the purpose of Secretarial Order No. 3039 which was to provide maximum permissible self-government to the newly self-governing entities, and because the High Court's determination that the case was in active trial and therefore need not be transferred was incorrect, the High Court is not deprived of jurisdiction where the presently objecting party

failed to make any objection before the High Court and where the judgment by the High Court is being collaterally attacked. *United Church of Christ v. Hamo*, 3 FSM R. 445, 451-52 (Truk 1988).

The determination of jurisdiction itself normally qualifies for protection under the common law principle of res judicata, requiring a second court to presume that the court which issued the judgment did properly exercise its own jurisdiction, but plain usurpation of power by a court which wrongfully extends its jurisdiction beyond the scope of its authority, is outside of the doctrine and does not qualify for res judicata protection. *United Church of Christ v. Hamo*, 4 FSM R. 95, 107-08 (App. 1989).

Although final judgment in a case has been entered by the Trust Territory High Court, because any effort by a party to have the High Court consider its own jurisdiction would have been futile, it is procedurally fair to later afford the party an opportunity to question that jurisdiction. *United Church of Christ v. Hamo*, 4 FSM R. 95, 118-19 (App. 1989).

The decision as to jurisdiction is one to be made by the court, and counsel may not by agreement, confer upon a court jurisdiction that it does not have by law. *Federal Bus. Dev. Bank v. S.S. Thorfinn*, 4 FSM R. 367, 369 (App. 1990).

Where the TT High Court's exercise of jurisdiction was a manifest abuse of authority, allowing the judgment of the High Court to stand would undermine the decision-making guidelines and policies reflected in the judicial guidance clauses of the national and state constitutions and would thwart the efforts of the framers of the Constitution to reallocate court jurisdiction within the FSM by giving local decision-makers control over disputes concerning ownership of land. *United Church of Christ v. Hamo*, 4 FSM R. 95, 119 (App. 1989).

Issuance of a search warrant is indisputedly within the FSM Supreme Court's jurisdiction. *Jano v. King*, 5 FSM R. 388, 392 (Pon. 1992).

A maritime contract cannot be converted into a non-maritime one by stipulation of the parties so as to divest the court of its admiralty jurisdiction. *Maruwa Shokai (Guam), Inc. v. Pyung Hwa 31*, 6 FSM R. 1, 4 (Pon. 1993).

The term "concurrent" in art. XI, § 6(c) of the FSM Constitution has the same meaning as in § 6(b); i.e., that jurisdiction is concurrent as between the FSM Supreme Court and any other national courts that may be established by statute. It would be illogical and contrary to norms of constitutional interpretation to assume a different meaning for "concurrent" in § 6(c) than in § 6(b), since it is quite clear that the two sections are to be read together. *Faw v. FSM*, 6 FSM R. 33, 35 (Yap 1993).

The framers of the Constitution made clear that the term "exclusive" in art. XI, § 6(a) of the FSM Constitution means that for the types of cases listed in that section, the trial division of the FSM Supreme Court is the only court of jurisdiction. *Faw v. FSM*, 6 FSM R. 33, 35 (Yap 1993).

A state law cannot divest the FSM Supreme Court of exclusive jurisdiction in cases arising under art. XI, § 6(a) of the FSM Constitution. *Faw v. FSM*, 6 FSM R. 33, 36-37 (Yap 1993).

Under the FSM Constitution the FSM Supreme Court may hear cases on appeal from the highest state court in which a decision may be had if that state's constitution permits it. The Chuuk State Constitution permits such appeals, which, in civil cases, Chuuk statute provides be made by certiorari. *Gustaf v. Mori*, 6 FSM R. 284, 285 (App. 1993).

Because a decision of a single justice in the appellate division of the Chuuk State Supreme Court may be reviewed by an appellate panel of the same court it is not a final decision of the highest state court in which a decision may be had, which it must be in order for the FSM Supreme Court to hear it on appeal. *Gustaf v. Mori*, 6 FSM R. 284, 285 (App. 1993).

Although, ordinarily, an issue must be raised at the trial level for it to be preserved for appeal, whether a court has subject matter jurisdiction is an issue that may be raised at any time. *Hartman v. FSM*, 6 FSM R. 293, 296 (App. 1993).

The FSM Supreme Court will not interfere in a pending state court proceeding where no authority has been cited to allow it to do so, where the case has not been removed from state court, where it has not been shown that the national government is a party to the state court proceeding thereby putting the case within the FSM Supreme Court's exclusive jurisdiction, and where it has not been shown that the movants are parties to the state court proceeding and thus have standing to seek national court intervention. *Pohnpei v. Kailis*, 6 FSM R. 460, 463 (Pon. 1994).

§ 203. Jurisdiction over persons – Civil.

The Supreme Court may exercise personal jurisdiction in civil cases only over persons residing or found in the Federated States of Micronesia or who have been duly summoned and voluntarily appear, except as provided in section 204 of this chapter.

Source: PL 1-31 § 27.

Cross-reference: For constitutional provisions on jurisdiction, see FSM Const., art. XI, §§ 6, 7, and 8. The provisions of the Constitution are found in Part I of this code.

For statutory provisions on Judicial Procedures, see title 6 of this code.

Case annotations: In deciding who may litigate in the FSM Supreme Court, the goal is to develop principles consistent with the language of the Constitution and calculated to meet the needs of the people and institutions within the FSM. *Aisek v. FSM Foreign Investment Bd.*, 2 FSM R. 95, 100 (Pon. 1985).

There is no statutory limitation on the FSM Supreme Court's jurisdiction; the Judiciary Act of 1979 plainly contemplates that this court will exercise all of the jurisdiction available to it under the Constitution. 4 F.S.M.C. 201. *In re Nahnsen*, 1 FSM R. 97, 106 (Pon. 1982).

Personal Jurisdiction

Under the Compact of Free Association and the Federal Programs and Services Agreement, civilian employees of the United States government have immunity from civil and criminal process for wrongful acts and omissions done within the scope and in performance of official duty, unless expressly waived by the U.S. government. *Samuel v. Pryor*, 5 FSM R. 91, 95 (Pon. 1991).

A United States federal employee does not waive immunity from civil liability under the Compact of Free Association and the Federal Programs and Services Agreement when the civilian employee initiated litigation in the FSM Supreme Court in a separate lawsuit with different claims against different parties and where the affirmative misconduct is within the scope and in the performance of the official duty. *Samuel v. Pryor*, 5 FSM R. 91, 97 (Pon. 1991).

The purpose of the rules addressing process and service of process in civil cases is to assure that a defendant receives sufficient notice of all causes of action that are filed against him and thus has a fair and adequate opportunity to defend. Where a plaintiff fails to properly serve a defendant, the court does not have jurisdiction over that defendant, and the case may not proceed, but will be dismissed without prejudice. *Berman v. Santos*, 6 FSM R. 532, 534 (Pon. 1994).

Removal

A party named as a defendant in state court litigation which falls within the scope of art. XI, § 6(b) of the Constitution may invoke national court jurisdiction through a petition for removal and is not required to file a complaint. *U Corp. v. Salik*, 3 FSM R. 389, 394 (Pon. 1988).

Prolonged delay in seeking removal, as well as affirmative steps, such as filing a complaint in the state court, or filing a motion aimed at obtaining a substantive state court ruling, should normally be regarded as signaling acquiescence of a party to state court jurisdiction. *U Corp. v. Salik*, 3 FSM R. 389, 394 (Pon. 1988).

Jurisdiction based upon diversity of citizenship between the parties is concurrent in the Supreme Court and the national courts, and therefore a party to state court litigation where diversity exists has a constitutional right to invoke the jurisdiction of the national court. *In re Estate of Hartman*, 4 FSM R. 386, 387 (Chk. 1989).

If national court jurisdiction exists the national court should promptly grant the petition to remove. Thereafter the national court can entertain a motion to abstain or to certify specific issues to the state court. Proceedings in the national court do not have to stop while a certified issue is presented to a state court. *Etscheit v. Adams*, 5 FSM R. 243, 246 (Pon. 1991).

Where, for six and a half years after the national court had come into existence the noncitizen petitioners made no attempt to invoke the national court's jurisdiction, the noncitizen petitioners affirmatively indicated their willingness to have the case resolved in court proceedings, first in the Trust Territory High Court and later in Pohnpei state court, and thus have waived their right to diversity jurisdiction in the national courts. *Etscheit v. Adams*, 5 FSM R. 243, 247-48 (Pon. 1991).

The fact that a "tactical stipulation," made in 1988 to eliminate all noncitizens as parities to the litigation and thus place the litigation within the sole jurisdiction of the state court, may have been violated in 1991, does not retroactively change the effect of the stipulation for purposes of jurisdiction. *Etscheit v. Adams*, 5 FSM R. 243, 248 (Pon. 1991).

A motion for removal will be denied where, in an action in eminent domain under Truk State law the only defense available are those relating to the taking, and the counterclaims asserted as a basis for national court jurisdiction do not fall within a defense to the taking. *Chuuk v. Land Known as Mononong*, 5 FSM R. 272, 273 (Chk. 1992).

Removal to the Supreme Court pursuant to art. XI § 6(b) of the Constitution cannot be ordered if there is no diversity of citizenship among the parties to the case pending in the state court. *Etscheit v. Adams*, 5 FSM R. 339, 341 (App. 1992).

Where a party petitions for removal after denial of its motion to dismiss brought in state court and the motion to dismiss was filed in lieu of answering the compliant and was not argued by the parties, such action will be considered a defense to suit on procedural grounds rather than a consent to state court adjudication of the merits such that waiver of the right to remove may not be implied. *Mendiola v. Berman (I)*, 6 FSM R. 427, 428 (Pon. 1994).

If the FSM national court takes jurisdiction in a removal case all prior state court orders would remain in effect and record of all prior proceedings in the state court may be required to be brought before the court. *Pohnpei v. M/V Zhong Yuan Yu #606*, 6 FSM R. 464, 466 (Pon. 1994).

§ 204. Service of process outside the territorial jurisdiction of the Supreme Court.

(1) Any person, corporation, or legal entity, whether or not a citizen or resident of the Federated States of Micronesia, who in person or through an agent does any of the acts enumerated in this section, thereby submits himself or its personal representative to the personal jurisdiction of the Supreme Court of the Federated States of Micronesia as to any cause of action arising from:

(a) the transaction of any business within the Federated States of Micronesia;

(b) the operation of a motor vehicle within the Federated States of Micronesia;

(c) the operation of a vessel or craft within the territorial waters or airspace of the Federated States of Micronesia;

(d) the exploitation of economic resources within the exclusive economic zone of the Federated States of Micronesia;

(e) the commission of a tortious act within the Federated States of Micronesia;

(f) contracting to insure any person, property, or risk located within the Federated States of Micronesia at the time of contracting;

(g) the ownership, use, or possession of any real estate within the Federated States of Micronesia;

(h) entering into an express or implied contract, by mail or otherwise, with a resident of the Federated States of Micronesia to be performed in whole or in part by either party in the Federated States of Micronesia;

(i) acting within the Federated States of Micronesia as director, manager, trustee, or other officer of any corporation organized under the laws of or having a place of business within the Federated States of Micronesia, or as executor or administrator of any estate within the Federated States of Micronesia;

(j) causing injury to persons or property within the Federated States of Micronesia arising out of an act or omission outside of the Federated States of Micronesia by the defendant, provided in addition, that at the time of the injury either:

(i) the defendant was engaged in the solicitation or sales activities within the Federated States of Micronesia; or

(ii) products, materials, or things processed, serviced, or manufactured by the defendant anywhere were used or consumed within the Federated States of Micronesia; and

(k) living in the marital relationship within the Federated States of Micronesia notwithstanding subsequent departure from the Federated States of Micronesia, as to all obligations arising for alimony, child support or property rights under orders issued by the Supreme Court in an action for divorce or annulment between the two parties to the marital relationship, if the other party to the marital relationship continues to reside in the Federated States of Micronesia.

(2) Service of process may be made upon any person subject to the jurisdiction of the Supreme Court under this section by personally serving the summons upon the defendant outside the Federated States of Micronesia. Such service has the same force and effect as though service had been personally made within the Federated States of Micronesia.

(3) Service of summons shall be made under this section in like manner as service within the Federated States of Micronesia by any officer or person authorized to make service of summons in the State or jurisdiction where the defendant is served. An affidavit of the server shall be filed with the court issuing said summons stating the time, manner, and place of service. The court may consider the affidavit or any other competent proofs in determining whether service has been properly made. No default shall be entered until the expiration of at least 30 days after service. A default judgment rendered on service made under this section may be set aside only on a showing which would be timely and sufficient to set aside a default judgment entered upon personal service within the Federated States of Micronesia.

(4) Nothing contained in this section limits or affects the right to serve any process in any other manner now or hereafter provided by law.

Source: PL 1-31 § 28; PL 5-12 § 1; PL 5-125 § 1.

Cross-reference: FSM Const., art. XI, § 9. The provisions of the Constitution are found in Part I of this code.

The statutory provisions on Judicial Procedures are found in title 6 of this code. The FSM Supreme Court website containing the court rules and other court information can be found at http://www.fsmsupremecourt.fm/.

Case annotations: The applicable time frame before a default can be entered in an admiralty case is the thirty-day time period to answer or otherwise defend found in 4 F.S.M.C. 204(3) and in Supplemental Admiralty and Maritime Rule B(2)(b). *People of Tomil ex rel. Mar v. M/V Mell Sentosa*, 17 FSM R. 478, 479 (Yap 2011).

When, because the thirty-day time period applies, the defendants still have time within which to respond to the plaintiffs' complaint, the plaintiffs' requests for entries of default will be denied, and since no default will be entered, the plaintiffs' motion for a default judgment must also be denied. *People of Tomil ex rel. Mar v. M/V Mell Sentosa*, 17 FSM R. 478, 479-80 (Yap 2011).

The thirty-day time period to answer or otherwise defend before a default can be entered found in 4 F.S.M.C. 204(3) and in Supplemental Admiralty and Maritime Rule B(2)(b) is the applicable time frame in an admialty case. *People of Gilman ex rel. Tamagken v. M/V Easternline I*, 17 FSM R. 81, 83 & n.2 (Yap 2010).

To obtain personal jurisdiction over a non-resident defendant in a diversity action, a plaintiff must show that jurisdiction is consistent with the "long arm" statute, 4 F.S.M.C. §§ 203-04, and that the exercise of jurisdiction does not deny the defendant due process of law as guaranteed by article IV, section 3 of the FSM Constitution. *National Fisheries Corp. v. New Quick Co.*, 9 FSM R. 120, 128 (Pon. 1999).

Because Article IV, section 3 is based on the Due Process Clause of the United States Constitution, FSM courts can look to interpretations of the United States Due Process Clause to determine the extent to which the FSM long-arm statute may be used consistently with due process to exert jurisdiction over a non-forum defendant. *National Fisheries Corp. v. New Quick Co.*, 9 FSM R. 120, 128-29 (Pon. 1999).

If a defendant has never been properly served with a complaint and summons, that defendant cannot possibly file a late or untimely answer because the twenty-day time to answer allowed in Civil Procedure Rule 12(a), or the thirty-day time to answer allowed in 4 F.S.M.C. 204(3), does not start running until valid service of the complaint and summons has been made. *Medabalmi v. Island Imports Co.*, 10 FSM R. 32, 34 (Chk. 2001).

In addition to the personal service provided in 4 F.S.M.C. 204(2), service may be accomplished for the purpose of the long arm statute by any of the means provided for in Rule 4 of the FSM Rules of Civil Procedure. *National Fisheries Corp. v. New Quick Co.*, 9 FSM R. 120, 124 (Pon. 1999).

Under 4 F.S.M.C. 204, service of process may be made upon any person subject to the Supreme Court's jurisdiction by personally serving the summons upon the defendant outside the Federated States of Micronesia and service of summons under 4 F.S.M.C. 204 must be made in like manner as service within the Federated States of Micronesia by any officer or person authorized to make service of summons in the state or jurisdiction where the defendant is served. *Kosrae v. M/V Voea Lomipeau*, 9 FSM R. 366, 370-71 (Kos. 2000).

Since a summons and complaint must be served together, "process" in 4 F.S.M.C. 204(2) necessarily means both the complaint and the summons. *Kosrae v. M/V Voea Lomipeau*, 9 FSM R. 366, 371 (Kos. 2000).

If a plaintiff opts for personal service on a defendant outside the FSM, it must be accomplished by a person authorized to do so under 4 F.S.M.C. 204. *Kosrae v. M/V Voea Lomipeau*, 9 FSM R. 366, 371 (Kos. 2000).

Nothing contained in 4 F.S.M.C. 204 limits or affects the right to serve any process in any other manner now or hereafter provided by law, such as by registered mail with a signed receipt as provided for in FSM Civil Procedure Rule 4(i). *Kosrae v. M/V Voea Lomipeau*, 9 FSM R. 366, 371 (Kos. 2000).

§ 205. Judicial acts outside of territorial jurisdiction.

Any action taken by the Supreme Court or a Justice thereof or by a State court or a judge thereof outside the territorial jurisdiction of the court shall be as valid and effective as if taken within the territorial jurisdiction of the court.

Source: PL 1-31 § 29.

Cross-reference: For constitutional provisions on jurisdiction, see FSM Const., art. XI, §§ 6, 7, and 8. The provisions of the Constitution are found in Part I of this code.

For statutory provisions on Judicial Procedures, see title 6 of this code.

§ 206. Initial organization of Supreme Court.

The Supreme Court is deemed organized when:

(1) at least one Justice has taken office; and

(2) the Chief Justice of the Trust Territory High Court, upon written request by the Chief Justice of the Supreme Court of the Federated States of Micronesia, certifies that subsection (1) of this section has been complied with and that the Supreme Court is prepared to hear matters.

Source: PL 1-31 § 30.

Cross-reference: For additional case annotations regarding the transition from the Trust Territory High Court to the FSM Supreme Court see case annotations included in title 5 (Judiciary of the Trust Territory of the Pacific Islands) of this code.

§ 207. Requisites of certification.

Certification by the Chief Justice of the Trust Territory High Court shall be made in English and transmitted to the Chief Justice of the Supreme Court of the Federated States of Micronesia. The Chief Justice of the Trust Territory High Court may also transmit copies of his certification to the President and the Congress and to the State or District courts.

Source: PL 1-31 § 31.

Case annotations: To the extent that Secretarial Order 3039 can be read as permitting the Trust Territory High Court to continue, after the FSM Supreme Court had begun functioning, to control cases assigned by the FSM Constitution to the FSM Supreme Court, that exercise by Congress of the transitional power under the Constitution could run counter to other specific provisions of the Constitution, especially the judiciary article, and to fundamental principles of the separation of powers; any extension by the TT High Court of the powers assigned to it under Secretarial Order 3039 would violate those same constitutional provisions and principles. *United Church of Christ v. Hamo*, 4 FSM R. 95, 106 (App. 1989).

Actions of the TT High Court taken after establishment of functioning constitutional courts in the FSM, and without a good faith determination after a full and fair hearing as to whether the "active trial" exception permitted retention of the cases, were null and void, even though the parties failed to object, because the High Court was without jurisdiction to act and its conduct constituted usurpation of power. *United Church of Christ v. Hamo*, 4 FSM R. 95, 122 (App. 1989).

For additional case annotations regarding the transition from the Trust Territory High Court to the FSM Supreme Court, see annotations included in title 5 of this code.

§ 208. Severability.

If any provision of this chapter, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Source: PL 1-31 § 32.

Editor's note: A typographical error was made in the 1982 edition of the Code. After the words . . . "provision or application, and to this" the word "and" was changed to "end" to correct this typographical error.