

## **CHAPTER 10**

### **Fees, Costs, and Fines**

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#### **SUBCHAPTER I**

##### **Fees and Costs**

**§ 1011. Witness fees for travel.**

(1) Except as otherwise provided in this chapter, every person attending as a witness in any judicial proceeding shall be entitled to receive three cents per mile for going from and returning to his place of residence or usual place of business or employment, whichever is nearer, to the place where he is to appear as a witness, unless suitable transportation is provided without expense to him.

(2) If transportation is not provided without expense to him, the witness shall be entitled to receive the generally accepted prevailing charge for such transportation, in place of the three cents per mile, for the part of his travel for which such transportation is reasonably needed and this charge shall be considered as part of his mileage.

(3) If part, but not all, of his transportation is provided without expense to him, the witness shall only be entitled to receive mileage for the part of his travel for which transportation is not provided to him without expense to him. Except as otherwise provided by subsection (4) of section 1014 of this chapter, this mileage shall be paid by the party on whose behalf the witness is called or summoned, for each trip the witness is reasonably required to make.

(4) If the witness is summoned, the mileage for one round trip shall be tendered to him at the time the witness summons is served, and the mileage for any further trips required shall be tendered in advance of each trip, except when the witness summons is issued on behalf of the Trust Territory or an officer or agency thereof or under section 1014 of this chapter.

**Source:** TT Code 1966 § 259; TT Code 1970, 6 TTC 401; TT Code 1980, 6 TTC 401.

**§ 1012. Witness fees for subsistence.**

In any case in which a witness has attended or been summoned to attend before any court and it is necessary for him to remain in attendance for more than one day at a point so far removed from his residence or usual place of business or employment as to prohibit return thereto from day to day, the court before whom he has attended or been summoned may determine the amount reasonably needed to cover the witness' subsistence per day while in attendance, and this sum shall be tendered to the witness in advance by the party on whose behalf the witness was called or summoned, except when the summons is issued under section 1014 of this chapter or where suitable subsistence is provided without expense to the witness.

**Source:** TT Code 1966 § 260; TT Code 1970, 6 TTC 402; TT Code 1980, 6 TTC 402.

**§ 1013. Effect of failure to tender sufficient witness fees.**

The failure to tender the sums specified in sections 1011 and 1012 of this chapter for mileage or subsistence, or any part of either or both, however, shall not exempt the witness from complying with the summons if he has the means to comply. Any question as to the sufficiency of the amount tendered shall be brought promptly to the attention of the court or official before whom appearance is required, and the same is hereby authorized to make such order as to payment of the witness fees as is just.

**Source:** TT Code 1966 § 261; TT Code 1970, 6 TTC 403; TT Code 1980, 6 TTC 403.

**§ 1014. Proceedings when persons unable to pay fees.**

(1) Any court may authorize the commencement, prosecution, or defense of any case, action, or proceeding, civil or criminal, or any appeal therein, without prepayment of fees for serving of process, jury fees, witness fees, or filing fees, or giving security therefore by a permanent resident of the Trust Territory who makes a statement under oath that he is unable to pay such fees or give security therefor. This statement under oath shall state the nature of the case, action, or proceedings, defense, or appeal, and that the person making the statement believes that he is entitled to relief.

(2) The officers of the court and the designated policeman shall issue and serve all process, and perform all duties in such cases without prepayment of fees or the giving of security therefor. Witnesses shall attend as in other cases.

(3) The court may dismiss the case, action, or proceeding if the statement that the person is unable to pay fees is untrue, or if the court is satisfied that the case, action, or proceeding is malicious or has no substantial basis.

(4) The court before whom any criminal case is pending or a judge thereof may order at any time that a witness summons be issued and served without prepayment of fees upon request of an accused who cannot pay witness fees. The request shall be supported by a statement under oath in which the accused shall state the name and address of each witness and the testimony which he is expected by the accused to give if summoned, and shall show that the evidence of the witness is material to the defense, that the accused cannot safely go to the trial without the witness, and that the accused is actually unable to pay the fees of the witness. If the court or judge orders the witness summons to be issued and served without prepayment of fees the fees of the witness so summoned shall be paid in the same manner in which similar fees are paid in case of a witness summoned on behalf of the Government.

(5) In the event that a court authorizes a party to proceed without payment of fees pursuant to this section, the director of the Administrative Office, Trust Territory judiciary, shall pay all fees which would otherwise be due under subsection (3) of section 1015 of this chapter to the court reporter or other person who prepares a transcript. Such payment shall be made from funds appropriated for the operation of the judiciary and allocated to the District in which the proceeding appealed from was held.

**Source:** TT Code 1966 § 262; TT Code 1970, 6 TTC 404; COM PL 6-101 § 2; TT Code 1980, 6 TTC 404.

**§ 1015. Schedule of court fees.**

Each clerk of courts shall charge and collect the following fees with regard to work handled by his office, and each community court shall charge and collect these fees with regard to work handled by it:

- (1) *Filing fees in civil actions.*
  - (a) for filing of notice of appeal to the Appellate Division of the High Court, five dollars;
  - (b) for filing of notice of appeal from the District court to the Trial Division of the High Court, one dollar;
  - (c) for trial in the Trial Division of the High Court, two dollars and fifty cents;
  - (d) for filing of complaint under the small claims procedure, twenty-five cents;
  - (e) for filing of motion for new trial under the usual procedure after a small claims judgment, twenty-

five cents;

(f) for filing of complaint in a District court or community court under the small claims judgment, fifty cents;

(g) for filing of complaint in the Trial Division of the High Court, one dollar.

(2) *Copy of records.* For a copy of any record or other paper in his custody, comparison thereof, and certifying it to be a true copy, twenty-five cents plus ten cents for each 100 words in excess of the first 100.

(3) *Transcripts of evidence and notes of hearing.* For a transcript of evidence in case of appeal from the Trial Division of the High Court in either criminal or civil cases, one dollar per page, or part thereof, for the original and two copies ordered at the same time, and fifty cents per page, or part thereof, for each additional copy ordered at the same time. Any party desiring to raise an issue on appeal from the Trial Division to the Appellate Division of the High Court depending on the whole or any part of the evidence, shall order at his own expense an original and not less than two copies of the transcript of evidence, the original for the court, one copy for the party ordering the transcript, and one copy for each of the opposite parties.

(4) *Recording land transfer documents.* For recording of all land transfers, fifty cents, except that there shall be no charge where the Trust Territory is the grantor.

**Source:** TT Code 1966 § 263; TT Code 1970, 6 TTC 405; COM PL 6-101 § 4; TT Code 1980, 6 TTC 405.

### **§ 1016. Disposition of court fees.**

(1) All court fees collected under section 1015 of this chapter by any community court shall be remitted monthly or as nearly so as reliable means of transmission will reasonably permit to the clerk of courts for the District.

(2) All court fees collected by any clerk of courts under subsections (1), (2), and (4) of section 1015 of this chapter, or received by him from any community court, shall be remitted monthly or as more often as may be directed by the Chief Justice, to the treasurer of the Trust Territory through the District finance officer.

(3) All court fees collected by any clerk of courts under subsection (3) of section 1015 of this chapter shall be paid to the court reporter or other person who prepares the transcript, in addition to the regular compensation provided to such reporter or other person.

**Source:** TT Code 1966 § 264; TT Code 1970, 6 TTC 406; COM PL 6-101 § 1; TT Code 1980, 6 TTC 406.

### **§ 1017. Allocation of costs.**

All fees and expenses paid or incurred under this chapter for the service of process, witness fees, or filing fees on appeal, by any party prevailing in any matter other than a criminal proceeding, shall be taxed as part of the costs against the losing party or parties unless the court shall otherwise order; provided that no fees paid to a witness who is a party in interest and is called and examined on his own behalf or on behalf of others jointly interested with him shall be allowed or taxed as costs; and provided further that no costs shall be taxed against the United States of America or the Trust Territory.

**Source:** TT Code 1966 § 265; TT Code 1970, 6 TTC 408; TT Code 1980, 6 TTC 408.

### **§ 1018. Additional costs may be taxed.**

The court may allow and tax any additional items of cost or actual disbursement, other than fees of counsel, which it deems just and finds have been necessarily incurred for services which were actually and necessarily performed.

**Source:** TT Code 1966 § 265; TT Code 1970, 6 TTC 407; TT Code 1980, 6 TTC 407.

**Cross-reference:** The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

**Case annotations:** The FSM Supreme Court's Trial Division is not precluded from allowing reasonable travel expenses of an attorney for a prevailing party as costs under 6 F.S.M.C. 1018 where there is a showing that no attorney is available on the island where the litigation is taking place. *Ray v. Elec. Contracting Corp.*, 2 FSM R. 21, 26 (App. 1985).

Procedural statute, 6 F.S.M.C. 1018, providing that the court may tax any additional costs incurred in litigation against the losing party other than fees of counsel, applies only to Trust Territory courts and not to courts of the FSM, and therefore does not preclude the FSM Supreme Court from awarding attorney's fees as costs. *Semens v. Continental Airlines, Inc. (II)*, 2 FSM R. 200, 205 (Pon. 1986).

The rule that each party to a suit normally must pay its own attorney's fees is the proper foundation upon which the system in the FSM should be built. *Semens v. Continental Airlines, Inc. (II)*, 2 FSM R. 200, 208 (Pon. 1986).

There is flexibility to modify the normal rule that each party pays its own attorney's fees when justice requires, and thus attorney's fees may be assessed for willful violation of a court order, when a party acts vexatiously or in bad faith, presses frivolous claims, or employs oppressive litigation practices, or when the successful efforts of a party have generated a common fund or extended substantial benefits to a class. *Semens v. Continental Airlines, Inc. (II)*, 2 FSM R. 200, 208 (Pon. 1986).

Recognizing that courts in most of the world normally do award attorney's fees to the prevailing party, the rule allowing a prevailing party to obtain an award of attorney's fees should perhaps be applied more liberally in the FSM than in the United States. *Semens v. Continental Airlines, Inc. (II)*, 2 FSM R. 200, 208 (Pon. 1986).

### **§ 1019. Apportionment of costs.**

Where there is more than one prevailing or losing party, costs may be apportioned by the court as it deems just.

**Source:** TT Code 1966 § 265; TT Code 1970, 6 TTC 409; TT Code 1980, 6 TTC 409.

**Case annotations:** The determination of costs to be awarded to the prevailing party in litigation is a matter generally within the discretion of the trial court. *Ray v. Elec. Contracting Corp.*, 2 FSM R. 21, 25 (App. 1985).

Where plaintiff's complaint is written in English and the defendant requests a written translation into a local Micronesian language, and where appears that this is the only language the defendant can speak or read, the trial judge may order that the court provide a written translation and that the expense of providing the translation shall be taxed as a cost to the party not prevailing in the action. *Rawepi v. Billimon*, 2 FSM R. 240, 241 (Truk 1986).

Where there is dismissal of an action, even though the dismissal is voluntary and without prejudice, the defendant is the prevailing party within the meaning of Rule 54(d) which provides for awards of costs to the prevailing party. *Mailo v. Twum-Barimah*, 3 FSM R. 411, 413 (Pon. 1988).

FSM Civil Rule 68, allowing for taxation of costs against a plaintiff who declines the defendant's offer of judgment and who then obtains a judgment less favorable than the amount of the offer, does not apply when the litigation is dismissed. *Mailo v. Twum-Barimah*, 3 FSM R. 411, 413 (Pon. 1988).

Where a plaintiff seeks dismissal of her own complaint without prejudice under Rule 41(a)(2), it is generally thought that the court should at least require the plaintiff to pay the defendant's costs of the litigation as a condition to such dismissal and these costs may include travel expenses of plaintiff's attorney. *Mailo v. Twum-Barimah*, 3 FSM R. 411, 415 (Pon. 1988).

Where the court set aside a default judgment upon the payment by defendant to plaintiff of air fare to attend the trial, no modification will be granted to require the defendant to pay the costs of the plaintiff's counsel to go to plaintiff's residence to take his deposition which is being noticed by the plaintiff, especially where there is no showing that plaintiff could not attend the trial, nor will the court decide before trial whether such deposition could be used at trial. *Morris v. Truk*, 3 FSM R. 454, 456-57 (Truk 1988).

Expenses such as faxing and telephoning to and from counsel, and travel, incurred because the defendant selected off-island counsel, fall outside the kind of expenses traditionally payable by the losing party and will be disallowed as costs, except where there is a showing of the unavailability of local counsel. *Salik v. U Corp.*, 4 FSM R. 48, 49 (Pon. 1989).

As a general rule, attorney's fees will be awarded as an element of costs only if it is shown that such fees were traceable to unreasonable or vexatious actions of the opposing party, but where the basic litigation flows from a reasonable difference of interpretation of a lease, the court is disinclined to attempt to sort out or isolate particular aspects of one claim or another of the parties and to earmark attorney's fees awards for those specific aspects. *Salik v. U Corp.*, 4 FSM R. 48, 49-50 (Pon. 1989).

The court commits no error, when a question of sufficiency of witness fees is not brought promptly to the attention of the court, to consider the matter as an allowance of costs. *In re Island Hardware, Inc.*, 5 FSM R. 170, 175 (App. 1991).

Where there are elements of victory and loss for both parties there is not a prevailing party to which costs could be allowed. *In re Island Hardware, Inc.*, 5 FSM R. 170, 175 (App. 1991).

The government does not pay twice when it violates someone's civil rights and then is forced to pay attorney's fees. It pays only once - as a violator of civil rights. Its role as a provider of public services is distinct from its role as a defendant in a civil case. Thus an award of costs and reasonable attorney's fees should be made to a publicly funded legal services organization whose client prevailed in a civil rights action. *Plais v. Panuelo*, 5 FSM R. 319, 321 (Pon. 1992).

When a plaintiff's motion is denied on the merits, the defendant may recover costs under FSM Civil Rule 54(d) if properly verified. *Berman v. Kolonia Town*, 6 FSM R. 242, 244 (Pon. 1993).

When a judgment is affirmed on appeal, costs are usually taxable against the appellant if the appellee timely files its bill of costs with the appellate division. A bill of costs for trial transcripts must be filed in trial court appealed from. *Nena v. Kosrae (III)*, 6 FSM R. 564, 568-69 (App. 1994).

The filing of a petition for rehearing does not automatically extend the time for filing a bill of costs or for opposing a timely filed bill of costs, to a period beyond the ruling on the petition for rehearing. *Nena v. Kosrae (III)*, 6 FSM R. 564, 569 n.5 (App. 1994).

Taxation of costs is not an additional award for the prevailing party. It is a reimbursement to the prevailing party of actual expenses (costs) incurred. A motion for taxation of costs must be denied if it fails to adequately verify appellee's actual costs. *Nena v. Kosrae (III)*, 6 FSM R. 564, 569-70 (App. 1994).

The provision that the cost of printing or otherwise producing necessary copies of briefs, appendices or copies of the record shall be taxable in the Supreme Court appellate division at rates not higher than those generally charged for such work in the area where the clerk's office is located, does not set the amount to be awarded; it sets a cap or upper limit on the actual costs incurred that can be reimbursed. *Nena v. Kosrae (III)*, 6 FSM R. 564, 569-70 (App. 1994).

## **SUBCHAPTER II**

### **Disposition of Fines**

#### **§ 1021. Court fines.**

All fines imposed by any court shall be paid into the Treasury of the Trust Territory; except that any fine imposed by any court under the authority of any District or municipal law shall be paid into the treasury of the jurisdiction which enacted the law.

**Source:** TT Code 1966 § 175(a); TT Code 1970, 6 TTC 451; COM PL 5-54 § 1; TT Code 1980, 6 TTC 451.

### **§ 1022. Civil fines.**

(1) Any fine imposed in accordance with law by anyone other than a court shall be paid into the Treasury of the Trust Territory, unless the law under which it is imposed otherwise directs. Such fines shall be considered civil fines and no person shall be imprisoned solely for failure to pay them, but any such fine may be collected in the manner provided for collection of taxes in chapter 1 of title 54 of this code, or as may be provided in the law under which the fine is imposed, provided it is not inconsistent with this section.

(2) In any civil suit to collect such a fine, the written statement of the person who assessed the fine shall have the same effect as that of the treasurer of a taxing unit under section 202 of title 54 of this code.

**Source:** TT Code 1966 § 175(c); TT Code 1970, 6 TTC 452; TT Code 1980, 6 TTC 452.

**Cross-reference:** Title 54 of this code is on Taxation and Customs.