

CHAPTER 7

Civil Rights

SECTIONS

§ 701. Deprivation of rights.

§ 702. Right to full and equal enjoyment of public accommodations.

Editor's note: Former chapter 7 of this title on Civil Rights was repealed in its entirety by PL 11-72 § 1. This new chapter 7 was enacted by PL 11-72 § 76 and is part of the Revised Criminal Code Act.

§ 701. Deprivation of rights.

(1) A person commits a crime if he or she willfully, whether or not acting under the color of law, deprives another of, or injures, oppresses, threatens, or intimidates another in the free exercise or enjoyment of, or because of his or her having so exercised any right, privilege, or immunity secured to him by the Constitution or laws of the Federated States of Micronesia, the laws of the Trust Territory of the Pacific Islands, or the Constitution or laws of the United States of America which are applicable to the Federated States of Micronesia.

(2) A person convicted under this section shall be imprisoned for not more than ten years.

(3) A person who deprives another of any right or privilege protected under this section shall be civilly liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, without regard to whether a criminal case has been brought or conviction obtained. In an action brought under this section, the court may award costs and reasonable attorney's fees to the prevailing party.

Source: PL 11-72 § 77.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

The website of the FSM National Government contains announcements, press releases, news, forms, and other information on the National Government at <http://fsmgov.org>.

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/>.

The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

Case annotations: The case annotations found throughout this title may refer to the earlier provisions of the National Criminal Code that were repealed by PL 11-72, the Revised Criminal Code. These annotations are retained for reference purposes as some of the language of the Revised Criminal Code is similar to the language of the former National Criminal Code.

National civil rights claims under 11 F.S.M.C. 701 furnish a jurisdictional basis for the case to be heard by the FSM Supreme Court. *Panuelo v. Pohnpei*, 2 FSM R. 150, 153 (Pon. 1986).

Chapter 7 of Title 11 of the FSM Code creates a statutory cause of action for individuals whose constitutional rights have been violated. It was enacted to safeguard the rights guaranteed to all FSM citizens under Article IV of the FSM Constitution. *Ladore v. Panuel*, 17 FSM R. 271, 275 (Pon. 2010).

When a complaint alleges that the plaintiff was denied equal protection of the laws, the suit will be deemed a private cause of action under 11 F.S.M.C. 701 for violation of civil rights guaranteed under the FSM Constitution even though the statute is not expressly cited in the complaint. *Berman v. College of Micronesia-FSM*, 15 FSM R. 76, 78 (Pon. 2007).

When the only reasonably effective means by which to obtain payment of a civil rights judgment against the state is through an order of garnishment directed to the national government, the anti-garnishment statute is unconstitutional to the extent that it precludes a garnishment order to pay a judgment that is based in material part on civil rights claims under 11 F.S.M.C. 701. *Estate of Mori v. Chuuk*, 11 FSM R. 535, 541 (Chk. 2003).

The court has granted writs of garnishment against funds held by the national government for the benefit of the State of Chuuk only in one instance, and that is where a judgment was entered against the state for violations of 11 F.S.M.C. 701 *et seq.*, the national civil rights statute. *Barrett v. Chuuk*, 12 FSM R. 558, 560 (Chk. 2004).

The FSM Congress has specifically acted to confer a cause of action for violation of civil rights, 11 F.S.M.C. 701 *et seq.*, and it is for judgments based on such claims that the court has issued writs of garnishment against the state. *Barrett v. Chuuk*, 12 FSM R. 558, 561 (Chk. 2004).

When the trial court issued findings of guilt for the defendant's violation of both 11 F.S.M.C. 532 and 11 F.S.M.C. 701, but only entered a conviction for his violation of 11 F.S.M.C. 701 and thereafter, the defendant was sentenced to a term of one year in jail, again, only for his conviction of 11 F.S.M.C. 701, the trial court's finding of guilt for the defendant's violation of 11 F.S.M.C. 532 is not at issue in the appeal. *Wainit v. FSM*, 15 FSM R. 43, 46 n.2 (App. 2007).

When a canceled foreign investment permit was ultimately reinstated, it renders moot the cancellation itself and leaves no administrative remedy for the permit holder to pursue. What then remains as a live court issue is the arbitrary and grossly incorrect manner in which the permit was originally canceled. This conduct constitutes a violation of 11 F.S.M.C. 701 *et seq.*, and entitles the plaintiff to a summary judgment. *Wortel v. Bickett*, 12 FSM R. 223, 226 (Kos. 2003).

While a contingency fee is not an arbitrary ceiling with respect to attorney's fees recoverable under an 11 F.S.M.C. 701(3) civil rights action, neither is it a floor. A contingency fee may be used as a basis for an attorney fee award when there are no contemporaneous records of the time the attorney had spent on the case, but since the point of departure for determining a reasonable fee under 11 F.S.M.C. 701(3) is to look at the amount of time spent, counsel in civil rights litigation should maintain careful records of time actually spent, notwithstanding the existence of any contingency fee agreement. *Herman v. Municipality of Patta*, 12 FSM R. 130, 137 (Chk. 2003).

A contingency fee agreement in a civil rights case acts as neither a floor nor a ceiling on attorney's fees awarded under the statute. Such a rule serves the purpose of helping to insure that an attorney will not be undercompensated where important civil rights have been vindicated, and increases the likelihood that a plaintiff who has a meritorious claim will have access to the courts. *Warren v. Pohnpei State Dep't of Public Safety*, 13 FSM R. 524, 526 (Pon. 2005).

The prevailing party in civil rights actions under 11 F.S.M.C. 701(3) is entitled to reasonable attorney fees and costs of suit as part of compensatory damages. The court must first determine the reasonableness of any claim for attorney's fees and costs. The usual method

of determining reasonable attorney's fees awards is based on an hourly rate. Thus the initial estimate of a reasonable attorney's fee is properly calculated by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate. *Walter v. Chuuk*, 14 FSM R. 336, 340-41 (Chk. 2006).

Any award of attorney's fees must be based upon a showing and a judicial finding, that the amount of fees is reasonable. The plaintiffs must therefore submit detailed supporting documentation showing the date, the work done, and the amount of time spent on each service for which a claim for compensation is made. *Walter v. Chuuk*, 14 FSM R. 336, 341 (Chk. 2006).

The prevailing party in civil rights actions under 11 F.S.M.C. 701 is entitled to reasonable attorney fees and costs of suit as compensatory damages. So long as a party has prevailed in a civil rights suit as a whole, that party is entitled to fees for all time reasonably spent on the matter, including the time spent on pendent state law claims that would not otherwise be statutorily entitled to a fee award, if the pendent claims arise out of a common nucleus of operative fact as the civil rights claim. *Lippwe v. Weno Municipality*, 14 FSM R. 347, 354 (Chk. 2006).

The prevailing party in civil rights actions under 11 F.S.M.C. 701 is entitled to reasonable attorney fees and costs of suit as compensatory damages. *Estate of Mori v. Chuuk*, 10 FSM R. 6, 14 (Chk. 2001).

The prevailing party in civil rights actions under 11 F.S.M.C. 701 is entitled to reasonable attorney fees and costs of suit as compensatory damages, and liability for attorney's fees will be assessed among the defendants in proportion to their responsibility for the judgment. *Atesom v. Kukkun*, 10 FSM R. 19, 23 (Chk. 2001).

Actions of a police officer in stripping a prisoner to punish and humiliate him, then beating him and damaging his pickup truck, constituted violation of the prisoner's constitutional rights to be free from cruel and unreal punishments and his due process rights. *Tolenoa v. Alokoa*, 2 FSM R. 247, 250 (Kos. 1986).

Because the social and economic situation in the FSM is radically different from that of the United States, rates for attorney's fees set by United States courts in connection with civil rights actions there are of little persuasive value for a court seeking to set an appropriate attorney's fee award in civil rights litigation within the FSM. *Tolenoa v. Alokoa*, 2 FSM R. 247, 255 (Kos. 1986).

Attorney's fee awards to prevailing parties in civil rights litigation should be sufficiently high at a minimum level to avoid discouraging attorneys from taking such cases and should enable an attorney who believes that a civil rights violation has occurred to bring a civil rights case without great financial sacrifice. *Tolenoa v. Alokoa*, 2 FSM R. 247, 255 (Kos. 1986).

A municipality which employs untrained persons as police officers, fails to train them and authorizes their use of excessive force and summary punishment, will be held responsible for their unlawful acts, including abuse of a prisoner arrested without being advised of the charges or given an opportunity for bail, whose handcuffs were repeatedly tightened during his 14-hour detention in such a way that he was injured and unable to work for one month. *Moses v. Municipality of Polle*, 2 FSM R. 270, 271 (Truk 1986).

A municipality which employs untrained persons as police officers, fails to train them and authorizes their use of excessive force and summary punishment, will be held responsible for their actions in stripping a prisoner, handcuffing his leg to a table and his arms behind his back, then kicking and abusing him. *Alaphen v. Municipality of Moen*, 2 FSM R. 279, 280 (Truk 1986).

There is no established market for legal services in Kosrae which could be used to determine a reasonable hourly rate for attorneys in civil rights cases. *Tolenoa v. Alokoa*, 2 FSM R. 247, 254 (Kos. 1986). [**Editor's note:** reversed by *Tolenoa v. Kosrae*, 3 FSM R. 147 (App. 1987).]

Despite the fact that some of the arguments made by plaintiff in successful civil rights litigation were rejected by the court, time devoted by counsel to these issues may be included in the civil rights legislation attorney's fee award to the plaintiff where all of the plaintiff's claims in the case involved a common core of related legal theories. *Tolenoa v. Alokoa*, 2 FSM R. 247, 259 (Kos. 1986).

Where an action is brought pursuant to 11 F.S.M.C. 701(3), allowing civil liability against any person who deprives another of his constitutional rights, the court may award reasonable attorney's fees to the prevailing party based on the customary fee in the locality in which the case is tried. *Tolenoa v. Kosrae*, 3 FSM R. 167, 173 (App. 1987).

In an action brought under 11 F.S.M.C. 701(1) forbidding any person from depriving another of his civil rights, where it is shown that the attorney for the prevailing party customarily charges attorney's fees of \$100.00 per hour for legal services in the community in which the case is brought, and when this is at or near the hourly fee rate charged by other attorneys in the locality, the court may award the prevailing party an attorney's fee based upon the \$100.00 hourly rate. *Tolenoa v. Kosrae*, 3 FSM R. 167, 173 (App. 1987).

A person's constitutional right to due process of law, and his right to be free from cruel and unusual punishment is violated when an officer instead of protecting the person from attack, threw him to the ground, and beat the person in the jail. *Meitou v. Uwera*, 5 FSM R. 139, 144 (Chk. S. Ct. Tr. 1991).

An injured victim is entitled to recover for mental anguish, including humiliation, resulting from unlawful conduct in violation of the victim's civil rights. *Meitou v. Uwera*, 5 FSM R. 139, 146 (Chk. S. Ct. Tr. 1991).

Constitutional provisions applicable to a prisoner may vary depending on his status. A pre-trial detainee has a stronger right to liberty, which right is protected by the Due Process Clause, FSM Const. art. IV, § 3. A convicted prisoner's claims upon liberty have been diminished through due process so that person must rely primarily on article IV, section 8 which protects him from cruel and unusual punishment. *Plais v. Panuelo*, 5 FSM R. 179, 190 (Pon. 1991).

In a case where a convicted prisoner, who is also a pre-trial detainee, asserts civil rights claims arising out of ill-treatment after arrest, denial of access to family is a due process claim, and physical abuse involves due process as well as cruel and unusual punishment claims. *Plais v. Panuelo*, 5 FSM R. 179, 190 (Pon. 1991).

In providing for civil liability under 11 F.S.M.C. 701(3), Congress intended that the word person would include governmental bodies. *Plais v. Panuelo*, 5 FSM R. 179, 204-05 (Pon. 1991).

The doctrine of respondeat superior is not to be used to determine whether a governmental entity is liable under 11 F.S.M.C. 701(3) for civil rights violations inflicted by government employees. The government entity may be held liable under 11 F.S.M.C. 701(3) when violations are caused by officials who are responsible for final policy making with respect to the action chosen from various alternatives. *Plais v. Panuelo*, 5 FSM R. 179, 205-206 (Pon. 1991).

Where a prisoner is physically abused by an official with final policy-making authority, these acts are governmental and a statement of state policy concerning the prisoner. *Plais v. Panuelo*, 5 FSM R. 179, 207 (Pon. 1991).

Because the FSM statute is based upon the United States model, the FSM Supreme Court should look to United States' court decisions under 42 U.S.C. § 1983 for assistance in determining the liability of a governmental body under 11 F.S.M.C. 701(3). *Plais v. Panuelo*, 5 FSM R. 179, 204 (Pon. 1991).

Refusing to permit the public defender or the prisoner's mother to see him are violations of civil rights guaranteed under 12 F.S.M.C. 218(1) and (2) and constitute official actions for which a state must be held responsible under 11 F.S.M.C. 701(3). *Plais v. Panuelo*, 5 FSM R. 179, 207 (Pon. 1991).

Confining a prisoner in dangerously unsanitary conditions, which represent a broader government-wide policy of deliberate indifference to the dignity and well-being of prisoners, is a failure to provide civilized treatment or punishment, in violation of prisoners' protection against cruel and unusual punishment, and renders the state liable under 11 F.S.M.C. 701(3). *Plais v. Panuelo*, 5 FSM R. 179, 208 (Pon. 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).

11 F.S.M.C. 701(3) is comprehensive and contains no suggestion that publicly funded legal services are outside the clause or should be treated differently than other legal services. *Plais v. Panuelo*, 5 FSM R. 319, 320-21 (Pon. 1992).

The FSM Supreme Court is immune from an award of damages, pursuant to 11 F.S.M.C. 701(3), arising from the performance by the Chief Justice of his constitutionally granted rule-making powers. *Berman v. FSM Supreme Court (II)*, 5 FSM R. 371, 374 (Pon. 1992).

Where a plaintiff has alleged his due process rights were violated but it is proven otherwise, the plaintiff cannot recover under the civil rights statute. *Nena v. Kosrae*, 5 FSM R. 417, 425 (Kos. S. Ct. Tr. 1990).

A corporation is a person who may recover damages for violation of its civil rights when it is deprived of its property interests, such as contract rights, without due process of law. *Ponape Constr. Co. v. Pohnpei*, 6 FSM R. 114, 127-28 (Pon. 1993).

The FSM civil rights statute has no retroactive effect. There is no liability under the FSM civil rights statute for events that took place prior to the effective date of the statute. *Alep v. United States*, 6 FSM R. 214, 219 (Chk. 1993).

Although a private person, not acting under color of law, may, under 11 F.S.M.C. 701, be held liable for civil rights violations if he injures, oppresses, threatens, or intimidates another in exercising or enjoying or having exercised or enjoyed one's civil rights, when the plaintiffs' complaint alleges no such actions and does not allege that the defendants were acting under color of law or were acting as agents of a government when committing the battery, the complaint does not allege a civil rights claim. *Harper v. William*, 14 FSM R. 279, 282 (Chk. 2006).

A battery or wrongful death, by itself, does not constitute a civil rights violation. *Harper v. William*, 14 FSM R. 279, 282 (Chk. 2006).

§ 702. Right to full and equal enjoyment of public accommodations.

(1) *Definitions.*

(a) "Equal access". All persons shall be entitled, without discrimination on the grounds of race, color, religion, language, place of origin, or gender, to the full and equal enjoyment of goods, services, facilities, privileges, advantages, and accommodations of:

- (i) any department, agency, or institution of, or acting on behalf of, the Federated States of Micronesia; or
- (ii) any public accommodation which affects commerce, as defined in this section.

(b) "Public accommodation" means any establishment which provides lodging to transient guests for charge, or any establishment which is engaged in selling food, beverage, or gasoline to the public, or any place of recreation, amusement, exhibition, sightseeing, or entertainment which is open to members of the public, or any facility for the public transportation of persons or goods.

(c) A public accommodation affects commerce if:

- (i) it is a place of lodging;
- (ii) it serves or offers to serve interstate travelers; or
- (iii) a substantial portion of the goods or entertainment it sells or provides has moved in commerce.

(d) "Commerce" means travel, trade, traffic, transportation, communication, and all other forms of commerce among the several States, or between any State and any foreign country or other area outside the Federated States of Micronesia, or between points in the same State but through any area outside the State.

(2) This section shall not apply to any private club or other establishment not in fact, open to the public, except to the extent that the facilities of such establishment are made available to the customers or patrons of an establishment within the scope of subsection (1) of this section.

(3) A person commits a crime if he or she:

- (a) withholds, denies, deprives, or attempts to withhold, deny, or deprive any person of any right or privilege protected under this section;
- (b) intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce any person for the purpose of interfering with any right or privilege protected under this section; or
- (c) punishes or attempts to punish any person for exercising or attempting to exercise any right or privilege protected under this section.

(4) A person convicted under this section shall be imprisoned for not more than five years.

(5) A person who deprives another of any right or privilege protected under this section shall be civilly liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, without regard to whether a criminal case has been brought or conviction obtained. In an action brought under this subsection, the court may award costs and reasonable attorney's fees to the prevailing party.

Source: PL 11-72 § 78.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.